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March 31, 2004

The Honorable Bradley Smith
Chairman
Federal Election Commission
999 E Street, NW
Washington, DC

MUR #

5440

Dear Chairman Smith,

Attached you will find a complaint filed by the Republican National Committee and Bush-Cheney '04, Inc. The activities of the various groups and individuals described in this complaint demonstrate a massive conspiracy to corrupt the federal campaign finance system.

These groups and individuals described herein have conspired to circumvent the law by creating a network of newly formed 527 political organizations working in complicity with other long established special interest groups and wealthy individuals to illegally raise and spend soft money while illegally coordinating their efforts in violation of 11 C.F.R. § 109.21, all with the express purpose of defeating President Bush. This massive ongoing effort has resulted in numerous violations of the Act.

These illegal activities are ongoing. It is clear from their own statements that these special interest groups and individuals will not stop their illegal efforts, especially since the Commission's powers do not include any relief that can be afforded until long after the election.

Even if the Commission were to expedite its proceedings, the administrative process under which the Commission must operate does not include timely relief. See 2 USC § 437g (a).

No penalty, civil or criminal, after the fact could possibly remedy the irreparable harm caused by allowing this illegal activity to continue unabated. These individuals and groups understand and appreciate that fact. Allowing this activity to continue would effectively destroy and make meaningless the campaign finance system mandated by Congress in 2002.

For these reasons, we respectfully request and urge the Federal Election Commission to dismiss this complaint at its next Executive Session meeting, in order to allow the complainants to seek immediate relief in the Federal District Court for the

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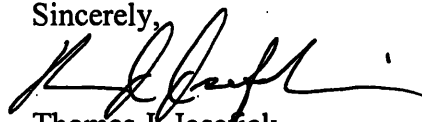
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District of Columbia. Such responsible final action by the Commission would legally allow Complainants to seek an immediate judicial remedy pursuant to 2 U.S.C. § 437g(a)(8) to this conspiracy of unprecedented proportions.

This action by the Commission would be unprecedented, but so is this matter. In this unique circumstance the Complainants respectfully submit that the Commission should follow the plain wording of 2 U.S.C. § 437g(a)(8) and dismiss this complaint, thereby allowing immediate judicial review. We respectfully submit that the Commission's mandate to enforce the Federal Election Campaign Act demands such extraordinary action.

The Complainants respectfully request that the Federal Election Commission consider the motion to dismiss pursuant to 2 U.S.C. § 437g(a)(8) at the next possible Executive Session.

Sincerely,



Thomas J. Josefiak
General Counsel

Cc: Commissioner Ellen L. Weintraub
Commissioner David M. Mason
Commissioner Danny L. McDonald
Commissioner Scott E. Thomas
Commissioner Michael E. Toner
Lawrence Norton, General Counsel

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BEFORE THE FEDERAL ELECTION COMMISSION

COMPLAINT

RESPONDENTS

The Media Fund, Inc;
America Coming Together;
America Votes;
Voices for Working Families;
Moveon.org;
Partnership for America's Families;
Moving America Forward;
John Kerry for President, Inc.;
Harold Ickes;
Ellen Malcolm;
Bill Richardson;
Steve Rosenthal;
Jim Jordan;
George Soros;
Laurie David;
Steven Bing;
Peter Lewis;
Et. al.

MUR No. 5440

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"[T]he McCain-Feingold goal and objective, which I support, is to eliminate altogether the capacity of soft money to play the role that it does in our politics." (Sen. John Kerry, Congressional Record, 3/27/01, p. S2930)

"In addition to the overwhelming amounts of soft money that were raised and spent in 2000, hundreds of millions of dollars were also spent on so-called issue ads. ... Those ubiquitous television ads are purchased by all kinds of organized special interests to persuade the American people to vote for or against a candidate. These ads, usually negative, often inaccurate, are driving the political process today. Do they violate the spirit of the campaign finance laws in this country? They certainly do." (Sen. John Kerry, Congressional Record, 3/20/02, p. S2149)

"[T]he post-Watergate campaign finance law capped individual contributions to candidates, parties and PACs. These limits were put in place after the country learned a hard lesson about the corrupting influence of money in politics." (Sen. John Kerry, Congressional Record, 4/3/01, pp. S3334-6)

"[I]n the post-Watergate era, we recognized that it was time to prevent secret stashes of cash from infiltrating our political system. We succeeded in that effort, and I believe the system worked reasonably well for some time, until the recent phenomena of soft money and sham issue advocacy overtook the real limits we had established for our campaign system." (Sen. John Kerry, Congressional Record, 4/3/01, pp. S3334-6)

Introduction

The use of soft money to influence a federal election is a clear violation of long-standing campaign finance law. The coordination of election activities between third-party groups and campaign committees is a clear violation of law. Despite these legal prohibitions, John Kerry's campaign is now benefiting from the largest illegal infusion of soft money from wealthy individuals, unions, corporations and other special interests in the post-Watergate era, and his campaign has unlawfully coordinated its activities with those activities of shadowy third-party groups.

Democratic special interest groups have created an illegal conspiracy of so-called section 527 political committees with the stated intent of injecting more than \$300 million of banned soft money into the 2004 election for the purpose of defeating President Bush and electing John Kerry.¹ The sponsors of the recently enacted Bipartisan Campaign Finance Reform Act ("BCRA") have

¹ In addition, the 527 soft money organizations have pledged to work with some two dozen liberal 501(c) special interest groups that have announced they will spend approximately \$200 million more towards their own traditional political organizational efforts to defeat President Bush. The 501(c) organizations are named in this complaint solely because of their activities as part of the 527 soft money network and not for their legitimate membership and grassroots lobbying activities as permitted under the Internal Revenue Code provision governing 501(c) organizations.

described the activities of the soft money 527 political committees as a clear violation of law. Senator McCain recently declared in testimony before the United States Senate Rules Committee, "Use of soft money by 527 groups whose major purpose is to effect federal elections is not legal."²

Faced with the reality that neither the Democratic party nor its Presidential candidate would have the financial resources to meet their needs with "hard" federal dollars, former aides and allies of the Democratic nominee have created a series of related committees funded with "soft dollars." This shadow Democratic soft money slush fund has already begun airing television and other advertisements and initiated voter mobilization programs to defeat President Bush and elect Senator Kerry. The Kerry campaign and the Democratic party have admitted that they are unable to pay for these activities with permissible hard dollars raised according to the Federal Election Campaign Act, as amended by BCRA (collectively, "the Act"). Simply put, the Kerry campaign and the Democratic party have been unable to fundraise to a level of hard dollars that they think is necessary for their campaign efforts. Instead, they have chosen to rely on an illegal conspiracy of donors and shadowy groups to defeat President Bush.

Despite being a sponsor of the 2002 Reform Act, Senator Kerry is now the largest direct beneficiary of illegal soft money in history. This illegal soft money conspiracy features the spending of hundreds of millions of illegal soft dollars for the purpose of influencing a federal election, the refusal of the 527 committees to register properly with the Federal Election Commission ("FEC"), impermissibly interlocking personnel, illegally coordinated soft money television buys, and illegally coordinated soft money voter mobilization activities. All are designed to defeat President Bush and elect John Kerry.

The scheme begins with wealthy political activists with special interest agendas who knowingly and willfully give donations prohibited by federal law to the soft money Section 527

² Statement of Senator McCain, U.S. Senate Committee on Rules and Administration, March 10, 2004.

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political committees for the express purpose of "defeating President Bush." The 527 groups then directly assist John Kerry's campaign for president with advertisements and voter mobilization programs through illegal soft money and coordination. Each facet of this conspiracy is illegal in isolation from the other parts of this soft money conspiracy. The wealthy contributors, the 527 groups, John Kerry's campaign are each potentially subject to both civil sanctions and criminal penalties. Taken together, they constitute an unprecedented criminal enterprise designed to impermissibly affect a presidential election.

As detailed below, the coordinated effort to use prohibited "soft money" as a slush fund for John Kerry's campaign constitutes a knowing and willful violation of the Act. In order to preserve the fundamental integrity of the nation's campaign finance laws, action must be taken with unprecedented speed to stop the perversion of the nation's election laws by the illegal use of soft money. This illegal operation must be shut down before it is allowed to further influence the 2004 election and render the notion of "campaign finance reform" a fraud.

Summary of Law and Violations

The soft money Section 527 organizations, soft money donors, the Kerry campaign and the Democratic party are knowingly and willfully violating numerous provisions of federal law. The perpetrators of these violations, the participants, and the beneficiary are subject to both civil sanctions and criminal penalties. The violations are:

First, the raising and spending of soft money by section 527 political committees for the express purpose of supporting John Kerry's campaign and defeating President Bush violates federal law because any expenditure for the purpose of influencing a federal election is subject to the limits and prohibitions of the Act. 2 USC §§ 441a and 441b. The organizers of these groups, the donors who knowingly and willfully made donations outside the limits of federal election law, and the beneficiaries of their activities are subject to penalties.

Second, the failure of soft money Section 527 organizations to register with the Federal Election Commission and their refusal to report their financial activities to the Federal Election Commission violate the disclosure provisions of federal law. 2 USC §§ 432, 433 and 434.

Finally, the 527 organizations' coordination of advertising and voter mobilization activities with John Kerry's campaign and the Democratic party is a violation of federal law. 2 USC § 441a.

The coordination is obvious from, among other facts, (1) how the media buys of the Kerry campaign are inextricably interwoven with the soft dollar buys from the 527s, which has allowed the Kerry effort to use illegal soft dollars to gain equal exposure with the Bush-Cheney hard dollar buy, and (2) the voter mobilization activities taken - and not taken - by the Democratic party structure. The structure of the illegal soft money network itself and the interlocking, dual relationships of the people involved make such illegal coordination inevitable.

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Law

Under the Act, any entity that spends or raises more than \$1,000 in a calendar year³ “for the purpose of influencing any election for federal office”⁴ must register as a federal political committee with the Commission. Use of soft money by 527 groups for the purpose of influencing federal elections is a violation of the Act.⁵ These groups are required to operate under the contribution limits, source prohibitions and reporting requirements of the Act.

A committee airing ads or conducting voter mobilization activities aimed at influencing a federal election cannot select whether or not it is a federal political committee that must register - its actions determine its status under the law.⁶ This filing requirement is not self-selecting. By their very nature and activities, the 527 political committees named in this complaint exist to influence federal elections. As organizations whose “major purpose is the nomination or election of a candidate,” expenditures by these committees “can be assumed to fall within the core area sought to be addressed by Congress. They are, by definition, campaign related.”⁷

Those seeking to exert influence over federal officeholders and candidates, the Supreme Court predicted, would turn to political committees which exist for the express purpose of the influencing the election or defeat of federal officeholders. The Supreme Court noted, “federal candidates would be just as indebted to these contributors as they had been to those who had formerly contributed to the national parties.”⁸

³ 2 U.S.C. § 431(4).

⁴ 2 U.S.C. § 431(9)(A)(i).

⁵ See, Statement of Senator John McCain, Senate Committee on Rules, March 10, 2004.

⁶ While BCRA did not change the threshold monetary amounts, it did broaden the standards applied in certain areas and the Supreme Court in December of 2003 affirmed this expansion. See 2 U.S.C. § 431(20)(A)(iii), 2 U.S.C. § 434(f)(3) and *McConnell v. FEC*, 540 U.S. ___, 124 S.Ct. 619 at 675 n. 64 (2003).

⁷ *Buckley v. Valeo*, 424 U.S. 1, 79 (1976); see also *McConnell*, 124 St. Ct. at 678 n.67 (emphasizing that “section 527 political organizations are, unlike 501(c) groups, organized for the express purpose of engaging in partisan political activity.”)

⁸ *McConnell v. FEC*, 124 S.Ct. at 673.

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An "expenditure" under the Act "includes payments," 11 CFR § 100.110(a), "made by any person for the purpose of influencing any election for federal office." 11 CFR § 100.111(a). *Buckley v. Valeo*, 424 U.S. 1 at 44, held that this meant "communications that in express terms advocate the election or defeat of a clearly identified candidate for federal office." The *Buckley* Court limited express advocacy to "magic words" such as "vote for," "elect," "support," "cast your ballot for," "Smith for Congress," "vote against," "defeat," "reject." *Id.* at fn. 52. The *McConnell* Court recently expanded the types of communications that are regulated by the Act holding that advertisements that "promote, support, attack or oppose" a clearly identified federal candidate "undoubtedly have a dramatic effect on federal elections" and can be regulated without violating the First Amendment. *McConnell*, 124 S.Ct. at 675.

At issue in this complaint is the meaning of "for the purpose of influencing any election for federal office." Prior to *McConnell v. FEC*, 540 U.S. ___, 124 S.Ct. 619 (2003), the lower courts had interpreted this phrase to mean communications that involved only "express advocacy" using *Buckley*'s "magic words." The lower courts had nearly universally understood this to be a constitutional limitation. But the *McConnell* Court ruled that, "the unmistakable lesson from the record in this [BCRA] litigation, as all three judges on the District Court agreed, is that *Buckley*'s magic-words requirement is functionally meaningless." *McConnell*, at 689.

Given this analysis by the majority, dissenting Justice Thomas noted, the holding in *McConnell* that the "express advocacy test" was no longer a constitutionally mandated limit meant that *McConnell* effectively overruled lower court decisions applying and upholding *Buckley*'s "express advocacy" standard. *McConnell*, 124 S.Ct. at 737 (Thomas, J., dissenting). See, e.g., *Clifton v. FEC*, 114 F.3d 1309, 1312 (CA1 1997); *Vermont Right to Life Comm., Inc. v. Sorrell*, 221 F.3d 376, 387 (CA2 2000); *FEC v. Christian Action Network, Inc.*, 110 F.3d 1049, 1064 (CA4 1997); *Chamber of Commerce v. Moore*, 288 F.3d 187, 193 (CA5 2000); *Iowa Right to Life Comm., Inc. v. Williams*, 187 F.3d 963, 968-970

(CA8 1999); *Citizens for Responsible Govt. State Political Action Comm. v. Davidson*, 236 F.3d 1174, 1187 (CA10 2000); cf. *FEC v. Furgatch*, 807 F.2d 857, 862-863 (1987).

At the same time that the Supreme Court eschewed the express advocacy standard, it affirmed in the context of "federal election activity" that the test of "promote, oppose, attack, and support clearly set forth the confines [,] provides explicit standards for those who apply them and gives the person of ordinary intelligence a reasonable opportunity to know what is prohibited." *McConnell*, at 675 n. 64 (internal quotations omitted). By adopting this standard, the *McConnell* Court expanded the reach of the Act beyond "express advocacy."

The Commission affirmed in February of this year that the Act required any communication which "promotes, supports, attacks or opposes" a federal candidate to fall under the "hard dollar" rules of the Act. AO 2003-37. The Commission, citing *McConnell*, at 675 n. 64 (2003), held that communications referring to a clearly identified federal candidate that promote, support, attack or oppose that candidate are for the purpose of influencing a federal election. "[C]ommunications that promote, support, attack or oppose a clearly identified Federal candidate" have a "dramatic effect" on federal elections. AO 2003-37, at 3.

In AO 2003-37, the Commission told Americans for a Better Country ("ABC"), a Section 527 organization, that it could not use donations from individuals in excess of the Act's limits or from prohibited sources for communications that "promote, support, attack or oppose" a candidate for federal office. AO 2003-37, at 9-10.⁹ AO 2003-37 reaffirmed the Act's threshold requirement as

⁹ The full text of the question and the FEC's answer follows:

3. You indicate that ABC may fund a communication that states: "President George W. Bush, Senator X and Representative Y have led the fight in Congress for a stronger defense and stronger economy. Call them and tell them to keep fighting for you." May ABC pay for this communication containing no express advocacy solely with donations from individuals that exceed the Act's limitations?

No. If the communication meets the criteria of an electioneering communication, it must be treated as an expenditure when made by a political committee. ...

to when a 527 organization becomes a federal committee by restating its long-standing requirement that any group that raises or spends more than \$1,000 for the purpose of influencing a federal election is required to register and become a federal committee.

In Advisory Opinion 2003-37, the Commission advised ABC that the section 527 committee could not solicit non-federal funds in fundraising communications that conveyed ABC's support or opposition to a specific federal candidate. AO 2003-37, p. 19-20. The Commission determined that 2 U.S.C. § 431(8) means that federal political committees can only raise funds using such solicitations if the funds are subject to the prohibitions and limitations of the Act.

In addition, the Commission found that communications for a 527 committee's voter identification, voter registration, or get-out-the-vote purposes that are not coordinated with a candidate and that do not refer to any federal candidate still must use federal funds in proportion to the number of federal and non-federal candidates on the piece or on the handout since the activities are for the purpose of influencing a federal election. See 11 C.F.R. § 106.1. The communications at issue here go much further.

The Commission has determined that soliciting soft money "by using the names of specific Federal candidates in a manner that will convey [its] plan to use those funds to support or oppose specific federal candidates..." constitutes an illegal contribution subject to the Act's contribution

Even if it does not have all the characteristics of an electioneering communication, it still must be treated as an expenditure and paid for entirely from ABC's Federal account for the following reasons. The communication you intend to produce would promote or support candidates for Federal office by proclaiming that those candidates have "led the fight in Congress for a stronger defense and stronger economy." As explained above in the introduction to the legal analysis, a payment for a communication that promotes, supports, attacks, or opposes a clearly identified Federal candidate is "for the purpose of influencing a Federal election" when made by a political committee and is therefore an "expenditure" within the meaning of 2 U.S.C. § 431(9) that must be paid for entirely with Federal funds. Moreover, there is no basis under 11 CFR § 106.1 for allocating the costs of this communication between ABC's Federal and non-Federal accounts, because the communication refers only to Federal candidates. Nor is allocation between ABC's Federal and non-Federal accounts permissible under 11 CFR § 106.6. Those allocation provisions explicitly do not cover candidate-specific communications. See 11 CFR § 106.6(b)(2)(i) and (iii). Consequently, because the payments for the communications you propose to run will be expenditures regulated under the Act, ABC must pay for these ads entirely with funds that comply with the Act's various limitations, including individual contribution limitations.

and source limitations. AO 2003-37, pp. 19-20. Such solicitations, the Commission determined, violate federal law. 2 U.S.C. § 431(8).

Coordination

Under the recently enacted Bipartisan Campaign Finance Reform Act, an expenditure becomes "coordinated" if each part of a 3-part test is met: the communication is paid for by someone other than the candidate, the candidate's committee, a political party or agent of any of the three and it satisfies the "content standard" and "conduct standards" set forth in Commission Regulations. 11 CFR § 109.21(a).

The "content standard" of 11 C.F.R. § 109.21(c) is satisfied when the communication is: 1) an "electioneering communication"; 2) the redistribution to the public of campaign material (with a few exceptions); 3) express advocacy of a clearly identified federal candidate; or 4) a "public communication" mentioning a political candidate distributed to the general public, 11 C.F.R. § 100.26.

The "conduct standard" is satisfied when the communication is: 1) made at the request or suggestion of the candidate, candidate's committee, political party committee or its agent; 2) the candidate, candidate's committee, political party committee or its agent are materially involved in certain decisions about the communication; 3) substantial discussions occur between the person paying for the communication or employees or agents of that person and the candidate, the candidate's committee, political party committee or agents; 4) made using a common vendor and the vendor uses or conveys information between the candidate or political party and the person paying for the communication; 5) made using a former employee of the candidate, candidate's committee or political party committee and information is used or conveyed to the person paying, or 6) redistribution of campaign material. 11 C.F.R. § 109.21(d).

The "former employee" standard was adopted by the Commission "to address what it

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understands to be Congress' primary concern, which is a situation in which a former employee of a candidate goes to work for a third party that pays for a communication that promotes or supports the former employer/candidate or attacks or opposes the former employer/candidate's opponent."¹⁰ This prong of the conduct test includes a temporal component requiring that the previous employment take place during the same election cycle as the current employment.¹¹ The Commission has explained that this "time limit establishes a clear boundary based on an existing definition and ensures that there is a clear link between the conveyance or use of the material information and the time period in which that material might be relevant."¹² Further, the Commission has held that to the extent that actions "result in a coordinated communication within the meaning of 11 CFR § 109.21, the payment for such communications would constitute an in-kind contribution to a candidate for Federal office or to a political party committee. Such contributions must be paid for entirely with Federal funds and are subject to...contribution limits under 2 U.S.C. § 441a(a)(1) or (2)." AO 2003-37.

¹⁰ Explanation and Justification, "Independent and Coordinated Expenditures," 68 F.R. 438, January 3, 2003.

¹¹ 11 C.F.R. § 109.21(d)(5)(i).

¹² Explanation and Justification, "Independent and Coordinated Expenditures," 68 F.R. 438, January 3, 2003.

Violations

Specifically, the soft money conspiracy of section 527 political committees - in effect, a shadow Democratic party taking over the role of the Democratic national party committees through the use of illegal funds - is knowingly and willfully violating the Act by:

- Raising and spending soft dollars from sources prohibited by the Act and in amounts in excess of the Act's limitations for the purpose, by the admission of the groups' organizers and their major donors, of defeating President Bush;
- Using these illegal soft dollars to pay for broadcast communications and voter mobilization activities all designed and executed for the purpose, by the groups' own admissions, of influencing a federal election;
- Refusing to register with and report to the Federal Election Commission despite meeting the plain statutory definition of "political committees" by virtue of their activities and stated purpose;
- Knowingly soliciting donors for contributions not permitted by the Act for the purpose of influencing a federal election through defeat of a federal candidate;
- Subjecting their soft money donors to knowing and willful violations by soliciting the donors for "soft money" contributions and the donors knew that their donations would be used to "defeat President Bush" and otherwise influence a federal election;
- Illegal "coordination" with the Kerry campaign through current party officials and former employees. This illegal coordination results in the activities of the "soft money" committees being illegal and prohibited contributions to the Kerry campaign. As detailed below, examples include a recent coordinated media buy between the Kerry campaign, the Media Fund and MoveOn.org so that the organizations improperly pooled soft dollars to match a Bush-Cheney '04 hard dollar advertising buy violating 11 C.F.R. § 109.21.

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As a result, this complaint is filed against all tentacles of the illegal Democratic soft money slush fund scheme, including the 527 entities, the individuals who have organized and managed this illegal soft money scheme as identified herein, and the donors to the groups who knew their contributions in excess of the limits and outside the prohibitions of federal law would be used to influence a federal election. Since all of these organizations and individuals have formed an alliance to defeat President Bush and interact regularly and admittedly coordinate with each other, if any part of the web illegally coordinates, the entire operation is operating illegally.

The principle beneficiary of this illegal infusion of soft money into the Presidential election is the John Kerry for President Committee, Inc. Kerry's committee has also violated the law by illegally coordinating various activities through individuals who are a part of this shadow soft money Democratic party and, therefore, accepting illegal contributions.

Purpose Behind the Conspiracy

"Liberals Form Fund to Defeat President; Aim is to Spend \$75 Million for 2004"

"Labor, environmental and women's organizations, with strong backing from international financier George Soros, have joined forces behind a new political group that plans to spend an unprecedented \$75 million to mobilize voters to defeat President Bush in 2004." (Thomas B. Edsall, Washington Post, Aug. 8, 2003, p. 3)

"Foes of Bush Form PAC in Bid to Defeat Him"

"The leaders of five groups with strong ties to Democratic causes announced today that to help offset Republican advantages in organizing and fundraising, they were joining to form a political action committee aimed at defeating President Bush next year." (New York Times, Aug. 8, 2003)

From its inception,¹³ the defeat of President Bush in the 2004 federal election has been the purpose of the soft money conspiracy of organizations. New Mexico Gov. Bill Richardson, head of both the 527 soft money group Moving America Forward and Chair of the Democratic National Convention that will officially nominate Kerry, summarized the importance of the soft money groups to the Democratic effort: "These groups are crucial to the anti-Bush effort, says ...Richardson. 'Now that campaign finance reform is law,' he says, 'organizations like these have become the replacement for the national Democratic party.'"¹⁴ In fact, Bill Richardson recently wrote, "This year I formed a political action committee, Moving America Forward - Si Se Puede - to help increase Hispanic participation in the American political process and to empower our community....We will conduct on-the-ground operations to turn out the Hispanic vote and win these four crucial states for our Democratic presidential nominee."¹⁵

Ellen Malcolm, president of Emily's List, which supports pro-choice Democratic candidates, is also a founding member of the shadow Democratic party scheme and president of the voter mobilization group Americans Coming Together (see below). Malcolm minced no words about the

¹³ The *Washington Post* reported on May 25, 2003: "Major liberal organizations, from labor unions to civil rights groups, have begun to meet privately to develop a coordinated strategy to oppose President Bush's reelection in 2004. Their goal is to buttress the Democratic party and its nominee by orchestrating voter mobilization and independent media in as many as a dozen battleground states." Thomas B. Edsall, "Liberals Meeting To Set '04 Strategy," *The Washington Post*, May 25, 2003.

¹⁴ Jeffrey H. Birnbaum, "The New Soft Money," *Fortune*, November 10, 2003.

¹⁵ Bill Richardson, "Seeking the Latino Vote," http://www.hispaniconline.com/magazine/2004/jan_feb/Forum

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purpose of the shadow soft money committees: "We have to find ways to come together to do lots of the pieces of the presidential campaign, because the party will not have the soft money to use. We on the Democratic side are looking for effective ways to do the work of delivering the message and getting out the vote that used to be done by the party," said Malcolm of EMILY's List. Malcolm and her organization, having acquired a reputation for tactical sophistication, are leading several new efforts, launched in July, aimed at bringing liberal-leaning groups together to register and turn out voters."¹⁶

ACT, Malcolm said at the group's kick-off press conference, would conduct "a massive get-out-the-vote operation that we think will defeat George W. Bush in 2004."¹⁷ The New York Times reported that those organizations who joined the 527 soft money conspiracy "share a belief that they have no time to spare in the drive to defeat him [President Bush]."¹⁸

Harold Ickes, the longtime Democratic operative and Kerry ally who heads the \$140 million soft money television advertising organization, the Media Fund, is a co-founder of the soft money conspiracy and is one its key fundraisers along with Malcolm. Ickes told Fortune in its November 10, 2003 edition that his group was established to "buy TV and radio commercials to promote the policies of whoever gets the Democratic nod for President."¹⁹ Ickes went on to tell Fortune that the Media Fund expected Bush forces to barrage the Democratic nominee with ads as soon as he emerged from the Democratic primaries. "We need to be able to deal with that," Ickes told Fortune.²⁰ Not coincidentally, the shadow soft money Democratic committee announced that it would concentrate its activities "in 17 states, all of which are likely to presidential battlegrounds."²¹

¹⁶Julie Kosterlitz, "On The Ropes?" *The National Journal*, Sept. 6, 2003.

¹⁷Thomas Edsall, "Liberals Form Fund To Defeat President; Aim Is to Spend \$75 Million for 2004," *Washington Post*, Aug. 8, 2003; *see also*, Jeannie Cummings, "Democrats Launch Group To Combat Bush Cash Hoard," *Wall Street Journal*, Aug. 8, 2003.

¹⁸Michael Janofsky, "Foes of Bush Form PAC in Bid to Defeat Him," *New York Times*, Aug. 8, 2003.

¹⁹Fortune, November 10, 2003.

²⁰*Id.*

²¹*Id.*

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Jim Jordan, Kerry's former campaign manager who now works for the Media Fund recently said, "I'm working every day still, from the sidelines here, to see that [Kerry's] elected....I'm proud of my work, I'm grateful for the opportunity...."²² Jim Jordan's purpose and ultimate goal are no secret, and he brings the knowledge and information learned as Kerry's campaign manager to his soft money 527 activities every day.

Donors have also admitted that they were solicited and gave soft money contributions illegal under the Act for the express purpose of defeating President Bush and influencing a federal election. Billionaire financier George Soros, who at the time had pledged \$12.5 million to shadow soft money organizations, has long championed an "open society" and reduced penalties for illegal drug possession. He has made no secret that his sole purpose in contributing is to defeat the President in the upcoming federal election, telling the Washington Post he would spend his entire \$7 billion fortune to defeat President Bush "if someone guaranteed" the outcome.²³ Soros also wrote: "I and a number of other wealthy Americans are contributing millions of dollars to grass-roots organizations engaged in the 2004 presidential election [ACT and MoveOn.org]. We are deeply concerned with the direction in which the Bush Administration is taking the United States and the world."²⁴ In Soros' own words, donors were giving illegal soft money contributions with the expressed purpose of defeating a federal candidate - a clear cut violation of the Act. *See also* Laura Blumenfeld, "Soros' Deep Pockets v. Bush," Washington Post, Nov. 11, 2003 ("For Soros, defeating Bush is the 'central focus' of his life and 'a matter of life and death'"); Associated Press, Aug. 8, 2003 ("Billionaire Commits \$10 M to Defeat Bush" - "President Bush is leading us in the wrong direction," Soros said in a written statement. 'ACT is an effective way to mobilize civil

²² Lisa Caruso, "People," *National Journal*, Feb. 28, 2004.

²³ Laura Blumenfeld, "Soros' Deep Pockets Vs. Bush," *The Washington Post*, Nov. 11, 2003; *See also* Susan Milligan, "Soros Presses Anti-Bush Effort," *The Boston Globe*, March 22, 2004 ("I have made the rejection of the Bush doctrine the central project of my life for the next year...and that is why I am ready to put my money where my mouth is.")

²⁴ George Soros, "Why I Gave," *Washington Post*, December 5, 2003, p. 31.

society, to convince people to go to the polls and vote for candidates who will reassert the values of greatest open society in the world.”)(emphasis added)²⁵

Thus, the major (if not sole) purpose of all the groups and individuals named in this complaint is influencing a federal election through soft money 527 organizations and defeating a Presidential candidate. As such, they are violating the law by not operating under the hard money limits and source prohibitions of the Act, and by not registering their 527 committees with the FEC.

²⁵ Soros recruited fellow billionaire, Peter Lewis of Cleveland, to contribute to the soft money 527 organizations for the specific purpose of defeating President Bush. The Cleveland, Ohio Plain Dealer reported: “Peter B. Lewis, the Cleveland-based insurance billionaire and philanthropist, has pledged more than \$12 million to try to oust President Bush from the White House. ... The groups - MoveOn.org and Americans Coming Together - will try to motivate people to register and vote, using newspaper ads, television and radio commercials, e-mail, and public appearances to make their case.” Stephen Koff, “Lewis Pledges \$12 Million To Oust Bush,” [Cleveland, OH] *Plain Dealer*, Nov. 12, 2003.

The Structure of the Soft Money Conspiracy

Faced with a new campaign finance law they feared put them at a disadvantage, veterans of Democratic presidential and congressional campaigns, including that of John Kerry's, have created a network of illegal soft money organizations whose actions are designed to improperly influence federal elections.

Funded by wealthy individuals and special interest groups who all wish to affect government policies for their favored agendas, this network of 28 organizations has constructed an elaborate scheme to allow the unprecedented flow of illegal soft money to impact the 2004 Presidential and other federal elections. Aimed at taking over the hard dollar work of the national Democratic party structure, the 527s specific activities and publicly announced budgets include:

- a massive voter registration and mobilization drive budgeted at \$98 million in 17 battleground states among currently unregistered voters aimed at identifying and turning out only those who will vote against President Bush almost entirely funded with soft money;
- a soft money broadcast advertisement program budgeted at \$140 million designed to work in coordination with the limited resources of the Kerry campaign to use soft dollars to attack President Bush and match the all-hard dollar advertising effort of Bush-Cheney '04 and the Republican Party structure;
- an organizing group (budgeted at \$3 million) funded with soft money to control the \$250 million anti-Bush and pro-Kerry broadcast advertising and voter mobilization efforts of two dozen special interest groups;²⁶

²⁶ Lorraine Woellert, "The Evolution Of Campaign Finance?" *BusinessWeek*, September 15, 2003, p. 62.

- soft dollar 527 political committees with a combined budget of \$37 million whose purpose is to register and turn out minority voters to vote against President Bush and for Senator Kerry and;

- soft money Spanish-language TV ads budgeted at \$12 million designed to influence the Presidential election with anti-Bush and pro-Kerry messages.

Groups Composing the Illegal Soft Money Conspiracy

At the center of carrying out this soft money conspiracy are three 527 political committees and two service entities that control the activities of the others. The three are responsible for and coordinating other groups according to their tasks: paid advertising (the Media Fund, headed by Harold Ickes); voter identification and turnout (ACT, headed by Malcolm and Steve Rosenthal, former political director of the AFL-CIO), and coordination of the operations of more than two dozen allied special interest organizations (America Votes, headed by Cecile Richards, former chief of staff for House Minority Leader Nancy Pelosi).²⁷ In addition, communications, polling, research and rapid response is under the direction of Thunder Road, headed by Jim Jordan, Kerry's campaign manager until November 2003 and previously the director of Senator Kerry's leadership PAC, the Citizen Soldier Fund. Fundraising is done through a joint fundraising committee (Joint Victory Campaign 2004, a joint fundraising committee, under the direction of Ickes, Malcolm and Rosenthal).

Other newly created soft money 527s fill out the network - Voices for Working Families, Partnership for America's Families, and Moving America Forward. Each is funded by illegal soft money contributions from wealthy individuals, unions and 501(c) entities for the explicit purpose of influencing a federal election. Each one's stated purpose is the defeat of President Bush. The seven are:

America Coming Together

- > Projected Budget: \$98 million²⁸
- > Ellen Malcolm, president of Emily's List
- > Steve Rosenthal, former political director of the AFL-CIO.

²⁷ See Dan Balz and Thomas Edsall, "Democrats Forming Parallel Campaign: Interest Groups Draw GOP Fire," *Washington Post*, March 10, 2004, p.A1.

²⁸ Harold Meyerson, "Judging Terry," *The American Prospect*, Dec. 3, 2003 ("ACT - which has received \$10 million donations from several wealthy individuals, including George Soros - is budgeted to spend \$98 million.").

> Other key personnel are Andrew Stern and Gina Glantz of SEIU; Carl Pope of the Sierra Club; Cecile Richards, former chief of staff for Nancy Pelosi and president of America Votes (see below).

> Purpose: to identify, persuade, and turn out Democratic-leaning voters in 17 key states through house-to-house canvassing and high-tech means with the express purpose of defeating President Bush.²⁹ According to the ACT website, ACT is the "new foot soldiers of the progressive movement. We are dedicated to defeating George W. Bush."³⁰ ACT has filed as a federal political committee with the FEC; however, while it states that it is "dedicated" to defeating a federal candidate, the federal share it pays for these activities is 2 percent, with 98 percent of the costs paid for with soft dollars.³¹

²⁹ America Coming Together Website, <http://www.americacomingtogether.com>, (Accessed February 18, 2004). ("A new political action committee, America Coming Together (ACT), will undertake a substantial effort in 17 key states to defeat President George W. Bush and elect progressive officials at every level in 2004, and to engage and mobilize millions of voters on key public issues. ... The 17 states ACT will target are: Arizona, Arkansas, Florida, Iowa, Maine, Michigan, Minnesota, Missouri, Nevada, New Hampshire, New Mexico, Ohio, Oregon, Pennsylvania, Washington, West Virginia and Wisconsin. 'ACT is launching the largest field operation this country has ever seen,' said Andy Stern. 'We will be going door-to-door to let people know what the Administration's record really is on the bread-and-butter issues that voters care about.'" (America Coming Together Website, <http://www.americacomingtogether.com>, Accessed February 18, 2004).

³⁰ <http://www.Americacomingtogether.com> (Accessed March 10, 2004).

³¹ See Schedule H2, America Coming Together Year-End Report. Compare the language of the "solicitations that we would propose to direct, in the form of letters, to a list of potential progressive donors" ACT submitted in a now withdrawn FEC Advisory Opinion Request 2004-5 with the actual letter it sent:

FEC Advisory Opinion Request: "I would like to ask you to consider making a major difference to our country's future - at a critical time, when it faces historic challenges, and also dangers. I would like to ask you to make a difference, by helping a new national progressive organization, America Coming Together (ACT). ACT is a national political organization dedicated to an historic registration and get-out-the-vote effort to turn out a huge progressive vote in November."

Actual letter (Attachment B): "Are you ready to go for it, prepared to lay everything on the line to win in 2004? I hope so. Because, if we can count on your personal support and active participating, 2004 will be a year of *America Coming Together* and George W. Bush going home. To keep their grasp on the White House and win other critical House, Senate and local races, the Bush campaign and the Republican National Committee are amassing a political fortune. By Election Day, they will have raised and spent over half a billion dollars to hold onto power. We can't match them dollar-for-dollar. But, we can - and must - match them door-for-door." (emphasis in original)

The Media Fund³²

- > Projected Budget: \$140 million
 - > Harold Ickes, Democratic National Committee Executive Committee member and deputy White House chief of staff under President Clinton
 - > Purpose: to raise large sums of money in unlimited amounts to buy TV and radio ads to bolster the Democratic presidential nominee through the July national convention and perhaps beyond.
- The Media Fund began airing its anti-Bush ads on March 12, 2004 in coordination with John Kerry for President and MoveOn.org. See pp. 51-61.

America Votes

- > Projected Budget: \$3 million³³
- > Cecile Richards, daughter of former Texas governor Ann Richards, and until June of 2003 a senior aide to House Democratic Leader Nancy Pelosi. Also serving as officers and directors are Malcolm; Gregory Moore of the NAACP; Carl Pope of the Sierra Club; Gov. Bill Richardson, chair of the Democratic National Convention and officer of other illegal section 527 groups; and John Sweeney, president of the AFL-CIO.

³² Lloyd Grove, "Cho-Time For Moby Vs. Drudge," [New York] *Daily News*, Jan. 23, 2004 ("Democratic loyalist Laurie David, wife of HBO star Larry David, has recruited an impressive array of celebs to host a Feb. 4 strategy session in New York on how to effect regime change at the White House. ... The event at the Ethical Culture Society will feature former President Bill Clinton and aide Harold Ickes, who is trying to raise \$140 million for anti-Bush media."). Media Fund Intends To Run Ads Helping Democrat Nominee From March 2004 Through The Convention. "Democrats such as Harold Ickes, a veteran of Clinton's political team, plan to collect soft money that once would have gone to the party for a media fund that will keep the Democratic message on television. 'It would basically be a lockbox for media,' Ickes said. 'Depending on the amount of money raised, you could begin in mid to late March and run through the convention.'" (Will Ester, "Democrats Try To Shrug Off Bush's Cash Advantage, Plot Response," The Associated Press, July 4, 2003).

³³ Jeanne Cummings, "A Hard Sell On Soft Money," *The Wall Street Journal*, Dec. 2, 2003. ("America Votes' Projected Budget For 2004 Is \$3 Million.")

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> Purpose: to coordinate the efforts of more than 20 anti-George Bush groups and reduce duplication of their multistate get-out-the-vote tactics. Funds pledged by these groups to anti-President Bush activity is estimated at \$250 million.³⁴

Partnership for America's Families

- > Projected Budget: \$12 million³⁵
- > Andy Stern, president of Service Employees Intl. Union
- > Steve Rosenthal, former political director of the AFL-CIO
- > Purpose: to register and get to the polls "progressive" voters with an emphasis on cities such as Philadelphia, St. Louis, and Cleveland. Although funded primarily with union money, the group plans to register and turnout voters beyond the unions' membership.³⁶

Voices for Working Families

- > Projected Budget: \$25 million³⁷
- > Linda Chavez-Thompson who serves a Vice-Chair of the Democratic National Committee and as Executive Vice-President of the AFL-CIO, Gov. Bill Richardson who is Chair of the Democrat

³⁴ See Attachment C.

³⁵ Harold Meyerson, "Judging Terry," *The American Prospect*, Dec., 2003 ("Today Rosenthal heads two key 527s: the labor-backed Partnership for America's Families, which financed the astonishing registration program in Philadelphia, and the more broadly funded America Coming Together (ACT). Both organizations will register, propagandize and get out the votes of blacks, Hispanics and working women. Partnership has a \$12 million budget through November '04; ACT - which has received \$10 million donations from several wealthy individuals, including George Soros - is budgeted to spend \$98 million.").

³⁶ AFL-CIO Website, "Forging A Greater Political Voice For Working Families," www.aflcio.com, February 25, 2003 ("A new organization has been formed called The Partnership for America's Families. The partnership plans to conduct an intensive campaign to mobilize massive numbers of voters outside labor's ranks against the anti-worker, anti-union policies of the Bush Administration, and to support a pro-working families agenda.").

³⁷ Gerald McEntee, Voices For Working Families Press Conference, Oct. 26, 2003 ("Voices For Working Families Raising \$25 Million For 2004 Election"); Handout At Voices For Working Families Press Conference, October 6, 2003 ("Voices For Working Families Will Work To Organize Voting Activities In 16 Battleground States. "Voices for Working Families is a nonprofit 527 organization pledged to aggressively organize voting activities in 16 battleground states. We will work to register people of color and women to vote, share information about critical working family issues and provide opportunities to raise a unified voice for social and economic justice. Our goals are to register, educate and mobilize.")

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National Convention and officer of several illegal Section 527 groups, and Harold Schaitberger who is General President of the International Association of Firefighters and National Co-Chairman of John Kerry for President, Inc.

> Purpose: to register and mobilize the votes primarily of minorities and women in 16 targeted states,³⁸ using funds that mostly come from labor unions.

Moving America Forward

> Projected Budget: \$2 million

> Bill Richardson, Democratic New Mexico governor and Chair of the Democratic National Convention.

> Purpose: to increase voting by Hispanics in Arizona, Florida, Nevada, and New Mexico to "turn out the Hispanic vote and win these key states for our Democratic presidential nominee."³⁹ They have run broadcast advertisements in an effort to defeat President Bush.

Other Groups

Several other section 527 committees are coordinating their illegal soft money activities as part of the shadow Democratic soft money slush fund.

MoveOn.org: This organization, which has a federal committee registered with the FEC, has illegally used its non-federal account to pay for extensive ad buys.⁴⁰ Each of its ads is designed to

³⁸ Targeted States Include: Arizona, Florida, Iowa, Maine, Michigan, Minnesota, Missouri, Nevada, New Hampshire, New Mexico, Ohio, Oregon, Pennsylvania, Washington, West Virginia And Wisconsin. (Handout At Voices For Working Families Press Conference, October 6, 2003)

³⁹ Bill Richardson, "Seeking the Latino Vote," http://www.hispaniconline.com/magazine/2004/jan_feb/Forum

⁴⁰ MoveOn.org fits squarely under FEC Advisory Opinion 2003-37 to Americans for a Better Country, and as such is knowingly and willfully refusing to conduct all its activities designed to influence a federal election from its federal account. Its use of its soft money 527 committee to air its ads directly contradicts the holding of AO 2003-37.

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"attack or oppose" President Bush,⁴¹ and therefore constitutes illegal expenditures of soft dollars in an attempt to influence a federal election. Estimates of the amount of time actually bought vary, but appear to be about \$10 million,⁴² including a recent nationwide buy coordinated with simultaneous buys by the Kerry campaign and the Media Fund. In addition, MoveOn.org has made no secret of its ongoing communications with Democratic party officials⁴³ and the elected Democratic leadership in the Senate and House.⁴⁴ The Kerry campaign website even lists events such as an "East Bay for Kerry / MoveOn.org House Party" attended by Teresa Heinz-Kerry (in person) and John Kerry (who participated by conference call).

New Democrat Network: A member of the 527 soft money scheme, New Democrat Network has run a separate \$5 million television campaign aimed at Latino voters in four states.⁴⁵ This soft money 527 committee has among its advisors Gov. Bill Richardson, who also serves as the chairman

⁴¹ MoveOn.org Voter Fund "Strategy" Memo: "Our Objective Is To Challenge George Bush's Policies And Record In Order To Reduce Support For His Re-Election In 2004." (MoveOn.org Voter Fund Website, <http://www.moveonvoterfund.org/strategy.html>, Accessed March 10, 2004); See Beth Fouhy, "MoveOn.org Becomes Anti-Bush Online Powerhouse," *The Associated Press*, Jan. 10, 2004 ("MoveOn.org Running "\$15 Million Advertising Campaign To Defeat President Bush." "MoveOn is now poised to be one of the Democrats' most effective fundraising vehicles during this year's presidential campaign. It has already raised millions to support candidates and fund ads such as the one criticizing Bush's \$87 billion commitment to rebuilding Iraq. In November, billionaire philanthropist George Soros and his business partner, Peter Lewis, pledged a \$5 million matching grant - a dollar for every two raised by MoveOn members - to create a \$15 million advertising campaign to defeat President Bush.")

⁴² Chuck Raasch, "Liberal Group Running New Anti-Bush Ads In 5 Swing States," *Gannett News Service*, Dec. 3, 2003 ("The ads are part of what MoveOn.org says will be at least a \$15 million campaign stretching into March. ... MoveOn.org is financed in part by a \$5 million pledge from billionaire George Soros and insurance magnate Peter Lewis. The controversial Soros has also pledged millions of dollars to another anti-Bush group, Americans Coming Together, whose principal organizers include former Clinton adviser Harold Ickes.")

MoveOn.org Voter Fund Has Spent Over \$9 Million On Anti-Bush Ads Since November 2003. "MoveOn, the left-leaning activist group, said on Wednesday that it would start another round of advertising against President Bush this week, bringing to more than \$9 million the amount it says it has spent since November on television commercials attacking Mr. Bush." (Jim Rutenberg, "Activist Group Plans New Ads Attacking Bush In Swing States," *The New York Times*, February 12, 2004)

⁴³ David Jackson, "Internet Group Mobilizes Broad Base For Political Activism," *The Dallas Morning News*, Oct. 26, 2003 ("MoveOn officials have talked to a variety of party officials about organizing and fund-raising next year.")

⁴⁴ John Cochran, "Internet-Based Activist Group Puts Powerful Spin On Politics," *CQ Weekly*, Oct. 3, 2003 ("A day or so later, Senate Democrats announced that they had invited Boyd to lunch on Capitol Hill on Sept. 18. Hurricane Isabel forced them to cancel the date, but they intend to reschedule. ... House Democrats also have taken note. Rep. Robert T. Matsui of California, chairman of the Democratic Congressional Campaign Committee, and Minority Leader Nancy Pelosi of California were among several House Democrats who met with MoveOn in June. What they see is a potential ally that could help them move votes and frame issues - as well as a template for the party's own organizing activities.")

⁴⁵ Balz and Edsall, "Democrats Forming Parallel Campaign," *Washington Post*, March 10, 2004, p.A1; see also Frank Davies, "New" Democrats Seek Hispanic Vote with Ads," *The Miami Herald*, Dec. 3, 2003.

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of the Democratic National Convention. The Media Fund's Harold Ickes has admitted coordinating with New Democrat Network and MoveOn.org on a recent \$5 million soft money broadcast advertising campaign attacking and opposing President Bush with soft dollars. The New York Times reported: "Mr. Ickes says his organization coordinates with MoveOn.org (see above) and the New Democrat Network (see above) in choosing which media markets to cover. 'The object is to make sure we stretch resources as far as possible,' he said."⁴⁶ These groups also coordinated with the Kerry campaign in this buy. See pp. 51-61.

Environment 2004: Former Clinton Administration officials have formed a soft money 527 group in the belief that "Bush's approach to logging, protection of endangered species, air and water pollution, toxic waste and global warming will be decisive campaign issues next year in swing states." The group is headed by Carol Browner, who served as Administrator of the EPA under President Clinton.⁴⁷ The group's email solicitation demonstrates that its purpose is influencing a federal election: "As the Democratic Party closes in on selecting its nominee, the 2004 Presidential election will enter a critical new phase. The primaries have given the Democratic contenders a lot of media attention, but they have been expensive, draining the finances of all the candidates. Meanwhile, Bush/Cheney '04 has raised over \$131 million to spend entirely on defeating the Democratic nominee. ... We are beginning our campaign in New Hampshire, using the same successful model we employed in our Florida launch. ... New Hampshire is a critical state. In 2000, Democrat Al Gore lost the state by a mere 7,211 votes. With your help, we can reach important swing voters and make the difference in 2004."⁴⁸

⁴⁶ Glen Justice and Jim Rutenberg, "Political Groups Taking on Bush Ad Campaign," *New York Times*, March 10, 2004.

⁴⁷ Scott Maben, "Anti-Bush Effort Coming to Lobby Oregon Voters, Environmentalists," *Eugene Register Guard*, Oct. 23, 2003; See IRS Form 8871 for "Environment2004" included in Attachment H.

⁴⁸ Environment 2004 email, February 26, 2004 (included in Attachment H).

Individual Participants in the Soft Money Conspiracy

"If somehow 'coordination' with the party becomes a wink and a nod, it would render our efforts really meaningless," says Senator Russ Feingold (D-Wis.), who sponsored reform legislation with Senator John McCain (R-Ariz.)

BusinessWeek, Sept. 15, 2003

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This complaint outlines a conspiracy where the individuals who have organized and managed this illegal soft money scheme and the donors to the groups who knew that their excessive or prohibited contributions would be used to defeat President Bush, have knowingly and willfully violated federal election law. Since all of these 527 organizations have formed an alliance to defeat President Bush, interact regularly and admit they coordinate with each other, if any part of the web illegally coordinates, the entire operation is operating illegally.

The ties between the leaders of the shadow web organizations, the Kerry campaign, the Democratic National Committee and the Democratic senatorial and congressional committees run deep - as deep as their commitment to defeat President Bush. In fact, one of the first things Malcolm did after ACT and the other groups were formed was call DNC Chair Terry McAuliffe "to tell him about the group."⁴⁹ The interlocking leadership among the soft money 527 organizations includes ties that demonstrate impermissible coordination with the Kerry campaign and the Democratic party, and demands immediate action. See 11 C.F.R. § 109.21. This apparent coordination renders all of the soft money spent to influence the Presidential election an excessive and prohibited contribution to Kerry for President.

The principle beneficiary of this illegal infusion of soft money into the Presidential election is John Kerry and John Kerry for President, Inc. Kerry's committee has also violated the law by illegally coordinating various activities with individuals who are a part of the web.

⁴⁹ Sharon Theimer, "Broad Effort Emerges to Help Democrats Cope with Loss of Soft Money," Associated Press, Aug. 13, 2003.

The key individual leaders of the Democratic soft money conspiracy and the key coordinators of the effort are:

- Harold Ickes - former deputy chief of staff in the Clinton White House who is now a Washington lobbyist and controls the Media Fund, which claims a \$140 million budget and has already aired advertisements opposing and attacking President Bush. He is a member of the Democratic National Committee's Executive Committee,⁵⁰ which, by definition, coordinates with the Presidential campaign and therefore is an agent of the Kerry campaign who learns of the plans and needs of the campaign.⁵¹ Simultaneously, Ickes is traveling around the country raising funds with Ellen Malcolm and Steve Rosenthal to build support for their soft money efforts through the Joint Victory Campaign 2004. Despite raising and spending more than \$1,000 for the express purpose of defeating President Bush, Ickes has not registered the Media Fund as a federal committee. His position with both the Media Fund and the Democratic National Committee makes the Media Fund's ad buy a coordinated expenditure with the DNC, which results in an illegal contribution.
- Steve Rosenthal - former political director of the AFL-CIO, is in charge of the illegal soft money slush fund's voter mobilization efforts, specifically through ACT. ACT has registered a federal account with the FEC. However, it claims a fictional 2 percent

⁵⁰ "Inside Two of the Soft-Money Havens," *National Journal*, Dec. 20, 2003, p.3805.

⁵¹ Ickes is no stranger to campaign finance scandals. As the person inside the Clinton White House in charge of the 1996 presidential campaign he testified before grand juries and the U.S. Senate about White House kaffeeklatsches and sleep-overs, fund-raising calls by the President from the White House and questionable contributions by foreign sources. He was never charged, but he found out in a newspaper article that he would not get the White House chief of staff job he coveted because of the campaign finance scandal. E.g., Francis X. Clines, "Campaign Finance: The Hearings: Looking for Tripwires, Ickes Heads to the Witness Stand," *New York Times*, Oct. 7, 1997; Lloyd Grove, "Harold Ickes, Insider Out; He was a man with access, he's got the documents to prove it," *Washington Post*, July 18, 1997 ("Caution, however, has never been the Ickes MO. 'Harold is a 'throw yourself in front of the train' kind of guy,' said former deputy White House counsel Jane Sherburne.")

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federal and 98 percent soft allocation ratio, while claiming for fundraising purposes that its avowed purpose is the defeat of President Bush.

- Ellen Malcolm - the president of Emily's List, is responsible for raising funds and organizing efforts for the soft money conspiracy. Emily's List is one of the founding participants in America Votes.
- Cecile Richards - chief of staff to House Democratic leader Nancy Pelosi during this election cycle until June of 2003, is coordinating America Votes, the umbrella group for two dozen liberal special interest groups, each of which has pledged \$50,000 in soft money for voter mobilization efforts beyond their own membership.
- Jim Jordan - John Kerry's former Presidential campaign manager and longtime confidant is now in charge of public communications and public relations for the Media Fund, ACT and America Votes.⁵² He managed all aspects of Kerry's presidential campaign until November of 2003, thus clearly indicating illegal coordination. As Kerry's campaign manager up until six weeks before he began working with the illegal 527 committees, the plans or needs of the Kerry campaign that Jordan brings to the soft money organizations constitutes illegal coordination under the Act and results in an impermissible contribution to the Kerry campaign. In addition, Jordan has knowingly and personally flouted the law. Commenting after FEC AO 2003-37 provided notice that the committees he represents had restrictions on their activities, Jordan said, "We'll be plowing forward as planned. It's clear that today's action is limited in its scope. We remain confident that we'll have the room to operate robustly and effectively."⁵³

⁵² Sharon Theimer, "RNC Wants Officials to Ban Partisan Soft Money Spending by Outside Groups in Presidential Race," The Associated Press, Jan 12, 2004.

⁵³ Glen Justice, "The 2004 Campaign: Fund-raising," *New York Times*, Feb. 19, 2004.

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- Minyon Moore - both a Kerry campaign consultant and a member of ACT's Executive Committee.⁵⁴ She is also the former chief operating officer of the DNC.
 - Michael Meehan - a frequent spokesman and full-time communications advisor to the Kerry campaign.⁵⁵ He is also on leave from NARAL,⁵⁶ where he served full-time until November 2003 overseeing "its vastly expanded soft money operation."⁵⁷ NARAL is a founding member of the soft money shadow network 527 committee, America Votes.⁵⁸
 - Bill Richardson - Governor of New Mexico, is the vice president of one soft money 527 broadcast advertisement group called Voices for Working Families and another soft money 527 broadcast advertisement group aimed particularly at Hispanic voters in Arizona, Florida, New Mexico and Nevada called Moving America Forward. He also serves as the Chairman of this summer's Democratic National Convention which will nominate Kerry as the Democratic party's presidential candidate.⁵⁹ At the time it was established, Richardson said Moving America Forward would accept money illegal under federal law and stated: "The objective is going to be to win back the White House and to increase our numbers in the Senate," Richardson told reporters. Richardson said his PAC would strive to increase Hispanic participation in the 2004 elections in the battleground states of New Mexico, Arizona, Florida and Nevada."⁶⁰ Richardson, the chair of the Democratic National Convention, is also an advisor to the New Democrat

⁵⁴ America Coming Together Website, <http://www.americacomingtogether.com/about/#who>, Accessed Feb. 5, 2004 ("Moore Serves On Executive Committee Of America Coming Together"); Glen Johnson, "Kerry To Press 'Environmental Justice,'" *The Boston Globe*, April 22, 2003; Jonathan Tilove, "For Black Democrats, No Great White Hope So Far," *Newhouse News Service*, July 15, 2003.

⁵⁵ Ron Fournier, "Kerry Adds Staff, New Message to Jump Start Ailing Campaign," *The Associated Press*, Nov. 20, 2003.

⁵⁶ Carol Beggy and Mark Shanahan, "Names," *The Boston Globe*, Nov. 21, 2003.

⁵⁷ Chris Cillizza, "NARAL Plans Big '04 Effort," *Roll Call*, May 8, 2003 ("In addition to these two existing fundraising entities, NARAL also established a 527 group late last month, which creates yet another soft-money conduit. The 527 can be more overtly political than the typical 501(c)(4) but must reveal its donors to the IRS.")

⁵⁸ Jim Drinkard, "With New Law, GOP Routs Democrats In Fundraising," *USA Today*, Aug. 21, 2003.

⁵⁹ "Soros, Lewis Push Campaign Law Limits To Counter Bush," *Bloomberg*, Oct. 28, 2003.

⁶⁰ Loie Fecteau, "Governor Enjoys National Stature," *Albuquerque Journal*, July 6, 2003.

Network, which has used unlimited soft money contributions to run Spanish language advertisements that attack and oppose President Bush.⁶¹

- Andy Grossman - left his position as Executive Director of the Democratic Senatorial Campaign Committee in February 2004. He now works with Jim Jordan at Thunder Road for the Media Fund, ACT and America Votes. Grossman, by virtue of the position as DSCC Executive Director in this election cycle, was an agent of federal campaigns and learned of the plans, needs and strategies of the Democratic party and its candidates. In addition, he helped devise the plans and strategies that Democratic party campaign officials are using to carry out Senate, House, and Presidential election strategies this election cycle, providing further evidence of coordination.
- Eli Pariser - key staff member for MoveOn.org who has simultaneously participated in supposedly independent broadcast advertisements attacking and opposing President Bush as part of the soft money 527 shadow scheme while at the same time writing fundraising letters directly for the John Kerry for President campaign.⁶² He is also the "campaign director" for MoveOn.org Voter Fund, the soft money 527 organization that is running the broadcast ads.⁶³
- Linda Chavez-Thompson is currently the vice chair of the Democratic National Committee, treasurer of the soft money 527 Voices for Working Families, and executive

⁶¹ Glen Justice and Jim Rutenberg, "Political Groups Taking on Bush in Ad Campaign," *New York Times*, March 10, 2004.

⁶² John Mercurio, "Money Matters As Race Gets Under Way," *CNN.com*, March 4, 2004 ("Some help is coming from two major, if predictable, groups - the Democratic National Committee and the MoveOn.org political action committee - which are firing off separate fund-raising letters on Kerry's behalf to as many as 4 million donors. ... The big question is whether Kerry will have the resources in this key moment to powerfully respond to the Republican attacks and present his positive vision for our country,' [MoveOn.org's Eli] Pariser wrote in his fund-raising appeal. 'Together, we can answer this question. If you've been holding off on contributing to a presidential campaign, now's the time to jump in. We have a Democratic nominee, and he needs our support today.'")

⁶³ See MoveOn.org Voter Fund, "MoveOn.Org Voter Fund Calls For Justice Dept. Investigation Of Administration's Illegal Use Of Government Funds For Bush 'Re-Election Ads,'" Press Release, <http://www.moveonvoterfund.org/cbsrelease.html>, Feb. 26, 2004.

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vice president of the AFL-CIO. As such, she is in a position to learn of the plans and needs of the Democratic party and its presidential candidate through her DNC role and convey that information to a soft money 527 committee whose purpose is to influence federal elections. While she may wear "two hats" for some purposes, that does not grant her blanket immunity to pass the political plans, needs, projects and activities from federal candidates and party committees to a soft money 527 organization.

Donors to the Soft Money Conspiracy: Special Interests' Soft Money Funding

The common trait among the shadow soft money network's financial supporters is that each individual or organization has a special interest agenda that it wants to enact, and that is opposed by the Bush Administration. The shadow 527s use of illegal soft money for the purpose of influencing a federal election is precisely what the Act prohibits. The notion that BCRA has somehow broken the "link to elected officials" and that the "pressure to give has greatly diminished" is belied by reality.⁶⁴

The financial supporters of the Democratic shadow web organizations have all been quite vocal in publicizing the soft money scheme. John Kerry and all Democratic candidates and officials are aware of their role through, at the least, media reports.⁶⁵ The shadow network's visible support for Kerry's candidacy will place these financial supporters and their special interest agenda in a position to exert as much influence on administration and congressional policies should their efforts to influence a federal election succeed as any party soft money donor ever could. This is exactly the type of large donations from wealthy individuals which occurred during the Watergate era that resulted in the passage of the original Federal Election Campaign Act and the recently enacted BCRA.

The simple truth is that special interests - from wealthy individuals who want to weaken anti-drug laws (Soros, Lewis)⁶⁶ to anti-war groups (MoveOn.org) to unions (AFL-CIO, SEIU, AFSME, Teamsters, others) to trial lawyers (ATLA) to anti-business environmentalist groups (League of Conservation Voters, Sierra Club) to pro-choice advocates (NARAL, Emily's List, Planned

⁶⁴ Cf. Thomas E. Mann and Norman Orenstein, "So Far, So Good on Campaign Finance Reform," *Washington Post*, March 1, 2004.

⁶⁵ Several Democrat Members of the House and Senate indicated publicly that they are well aware of the activities of these soft money 527 organizations. See February 12, 2004 letter from Senator Daschle, et. al., to the Commission and February 10, 2004 letter from Representative Pelosi, et. al., to the Commission, attached hereto as Attachment I.

⁶⁶ "527 Update: Peter Lewis and the Marijuana Policy Project," Center for Responsive Politics, www.opensecrets.org (visited March 16, 2004); "Soros, Lewis Push Campaign Law Limits in Effort to Defeat Bush," Bloomberg News Service, Oct. 28, 2003; Paul Crespo, "Big-money radicals give to Democrats," *Miami Herald*, Dec. 10, 2003; John K. Careisle, "George Soros' Plan to Defeat George Bush," *Human Events*, March 1, 2004.

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Parenthood) - have, through their creation of the shadow network of illegal soft money organizations, replaced the old Democratic party structure with an illicit soft money machine.⁶⁷ Through an active public relations operation headed by former Kerry campaign manager Jim Jordan, this coalition of liberal special interest groups and wealthy individuals - each with a policy agenda it wishes to enact - has made it well known to Kerry and all Democratic candidates that they are spending vast amounts of soft money to aid the electoral efforts of John Kerry and other Democratic candidates. The claim that BCRA has somehow broken the chain between federal candidates and soft money special interest groups is belied daily by news of yet more special interest group soft money activities on behalf of Kerry's campaign, and against the President's campaign.

⁶⁷ E.g. Jim Drinkard, "With new law, GOP Routs Democrats," *USA Today*, Aug. 21, 2003, p.1A; Anne-Marie O'Connor and Ronald Brownstein, "Hollywood Political Event Stirs Up Storm," *Los Angeles Times*, Dec. 3, 2003; Chris Cillizza, "527s Thrived in 2003," *Roll Call*, Feb. 2, 2004

Activities of the Soft Money Conspiracy

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According to numerous newspaper accounts, the Media Fund, aided by MoveOn.org, Moving America Forward and the New Democrat Network are using illegal soft money to pay for broadcast messages designed to impact the Presidential election. These groups are using illegal soft money to fund their advertising campaign and are illegally coordinating their efforts with the Kerry campaign.⁶⁸ In addition, the soft money organizations that comprise the conspiracy are making an illegal soft money contribution to the Kerry campaign by conducting voter mobilization and registration activity designed to impact a federal election with illegal soft money and without properly registering with the Commission as political committees. As is clear from numerous press reports, the activities of ACT, America Votes and the other soft money registration and turnout committees are designed to use illegal soft money to improperly influence a federal election through the defeat of President Bush. As such, they should be registered as federal political committees with the FEC.⁶⁹

Along with ACT, a key architect of this illegal scheme is America Votes, a soft money political committee that should be subject to hard dollar limits because its purpose is to influence the presidential election. The purpose of America Votes is to coordinate all the soft money activities of about two dozen other soft dollar 527 organizations, labor unions and liberal tax exempt entities.

As USA Today reported on August 21, 2003 (the numbers have since increased):

⁶⁸ See pp 52-61. In a graphic example of illegal coordination, this soft money buy appears to be coordinated with a buy of the Kerry campaign during the weeks of March 9-21. This countered an all hard dollar buy from Bush-Cheney '04. Attachment J (Source: New York Times, March 27, 2004) demonstrates that this ad buy was coordinated to avoid duplication and to permit the Kerry campaign to stretch its scarce federal dollars. The disbursements make evident that the Kerry campaign and the soft money groups illegally coordinated their buy, thereby turning the buy paid for by the Media Fund, MoveOn.org, Moving American Forward and New Democrat Network into an illegal and excessive soft money contribution to the Kerry campaign.

⁶⁹ For example, in Ohio, while claiming no coordination, the Associated Press recently reported: "[T]he Ohio Democratic Party has benefited so much from ACT and other groups that it has decided to skip a voter registration drive. 'We are not doing voter registration because we have all these groups working our base,' [Ohio Democratic Party] Chairman Denny White said. 'But we will spend our resources on communicating with Democrats' already in their database.'" "Soft-money groups' workers try to reach left-leaning voters in Ohio," Associated Press, March 28, 2004.

Groups allied with the Democratic party are forming an elaborate election machine for 2004 that will coordinate how they reach out to voters in battleground states. The organization, America Votes, is referred to informally as "The Table" because it serves as a forum to plan political activities. Its 15 interest groups have anted \$50,000 apiece to launch the organization. The group has said it plans to raise \$85 million.⁷⁰

America Votes recruited pledges of \$50,000 each from AFL-CIO, Sierra Club, MoveOn.org, Association of Trial Lawyers of America, League of Conservation Voters, Service Employees International Union, AFSCME, Moving America Forward (Gov. Bill Richardson's group), NARAL Pro-Choice America, Planned Parenthood, NAACP, National Education Association, New Democratic Network, Communications Workers of America, Emily's List, Teamsters, Human Rights Campaign, Handgun Control, Association of Community Organizations for Reform Now (ACORN), and ACT. Much of this work is funded by individuals with their own special interest agendas who apparently believe their policy goals will not be achieved without their donations to defeat President Bush, including George Soros, Peter Lewis and such former Democratic party mega-donors as Steve Bing and Linda Pritzker and her Sustainable World Corporation. Its goal is to turn out swing voters in presidential target states to defeat President Bush.⁷¹

Based on media reports the shadow Democratic party soft money slush fund operates as follows:

Located two floors apart in a Washington, D.C. office building located across the street from the AFL-CIO's headquarters⁷², the shadow organizations run their operations. The mission of the web is to bring together major supporters of liberal issues and causes, including unions, as detailed above, to form groups that will run broadcast communications and mobilize voters through voter

⁷⁰ Jim Drinkard, "With New Law, GOP Routs Democrats," *USA Today*, Aug. 21, 2003, p.1A.

⁷¹ Lorraine Woellert, "The Evolution of Campaign Finance?" *BusinessWeek*, Sept. 15, 2003; Jeanne Cummings, "A Hard Sell On Soft Money," *The Wall Street Journal*, Dec. 2, 2003.

⁷² The Democratic National Committee was also housed in the building during this election cycle while its Capitol Hill offices were being renovated. See "Soros, Lewis Push Campaign Law Limits in Effort to Defeat Bush," Bloomberg News Service, Oct. 28, 2003; "Inside the Dems' Shadow Party," *BusinessWeek*, March 22, 2004.

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registration and GOTV efforts to defeat President Bush and to aid the Democratic nominee and other Democratic candidates.

Its communications - both for fundraising and political purposes - use the name of President Bush, and in some instances Senator Kerry. Most contain express advocacy. All solicitations make clear that all funds raised will be used to defeat President Bush at the polls in an effort to discontinue his policies. Similarly, the voter registration messages in its door-to-door operations urge people to register in order to vote to defeat President Bush. And its television communications, such as the Media Fund's first ad, urged viewers to "take our country back" from President Bush, an expression of express advocacy that is a direct exhortation to take action that could only be taken at an election.⁷³

That the web of organizations is specifically accepting soft money contributions to defeat President Bush is clear from the contributions involving George Soros. Soros, in explaining his contributions to the Media Fund, ACT and MoveOn.org, candidly said: "Defeating George Bush is the central focus of my life."⁷⁴ In addition, Soros has been involved in contributing directly to Kerry's presidential campaign and those of several of his rivals.⁷⁵

Armed with the largest infusion of illegal soft money since the Watergate era, the Democrats' shadow soft money slush fund network has devised a plan to spend upwards of \$300 million through entities that should be registered as federal political committees subject to the hard money contribution limitations and source restrictions of the federal election laws to impact the 2004 federal elections, especially the Presidential contest. These groups are also coordinating

⁷³ The text of the Media Fund ad, included on the enclosed CD-ROM is: "President Bush. Remember the American Dream? It's about hope, not fear. It's about more jobs at home, not tax breaks for shipping jobs overseas. It's about giving our children their chance, not our debt. It's about providing health care for people, not just profits. It's about fighting for the middle class, not special interests. George Bush's priorities are eroding the American Dream. It's time to take our country back from corporate greed and make America work for every American." (emphasis added)

⁷⁴ Laura Blumenfield, "Soros's Deep Pockets vs. Bush," *Washington Post*, Nov. 11, 2003; George Soros, "Why I Gave," *Washington Post*, Dec. 5, 2003.

⁷⁵ Laura Blumenfield, "Soros's Deep Pockets vs. Bush," *Washington Post*, Nov. 11, 2003.

improperly with the purpose of defeating President Bush, electing Senator Kerry and influencing federal elections through soft money broadcast advertisements and voter mobilization activities.

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Legal Analysis: Soft Money

Donors to the Soft Money 527 Scheme Committed Knowing and Willful Violations By Giving Contributions They Knew to be Outside the Federal Limits for the Purpose of Defeating President Bush.

The list of donors whose contributions to the soft money 527 organizations were illegal under the Act's contribution limits and source prohibitions are listed in Attachment P. These donors knew that their contributions were not permitted under federal law but would be used for the purpose of electing or defeating a federal candidate. Evidence of the donor's knowledge can be found in the standard solicitation used by the Media Fund, ACT and America Votes,⁷⁶ which identify their intent to use the money raised to defeat President Bush.

The Media Fund is Violating Federal Law By Spending Millions of Prohibited Soft Dollars to Influence a Federal Election and Refusing to Register as a Federal Political Committee.

The Media Fund, a Section 527 organization,⁷⁷ and its various donors⁷⁸ are blatantly using illegal "soft money" to influence the Presidential election. In addition, it is coordinating with the Kerry for President campaign as evidenced through its television buy in conjunction with the Kerry campaign and MoveOn.org, and through Jim Jordan, the former Kerry campaign manager. This knowing and willful circumvention of the new federal election laws demands rapid action and sanctions.

As an initial matter, because the Media Fund's broadcast advertisement attacks and opposes President Bush, a candidate for federal office, and costs more than \$1,000, the Media Fund is required to use "hard" federal dollars to pay for its ads and to register as a federal political committee.

⁷⁶ See Attachment B, ACT's solicitation letter. See also Anne-Marie O'Connor and Ronald Brownstein, "Hollywood Political Event Stirs Up Storm," Los Angeles Times, December 3, 2003.

⁷⁷ See attached IRS Form 8871 for "Media Fund."

⁷⁸ Identified in Attachment P.

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Created as part of the "shadow Democratic party,"⁷⁹ the Media Fund violates federal law by using all soft dollars to influence a federal election and to serve the role the Democratic party played in past election cycles. This use of soft-money by a Section 527 organization knowingly and willfully violates the Act and a ruling the Commission issued last month in AO 2003-37. The Media Fund could have aired this advertisement through a federally registered separate segregated fund (if it had not been coordinated with the Kerry campaign through its officers and employees), but instead chose to use illegal soft dollars raised from liberal special interests in excess of the limits of federal law. Based upon media reports, it appears the Media Fund solicited, and donors knowingly gave, soft money contributions for the purpose of defeating President Bush. This subjects the Media Fund and its donors to enforcement actions and penalties under the Act. As detailed above, if the Media Fund's donors knowingly and willfully contributed illegal soft money for the purpose of influencing a federal election they are subject to knowing and willful violations.

The Media Fund Has Failed to Register as a Political Committee as Required by the Federal Election Campaign Act

Under the Act, any entity that spends or raises more than \$1,000 in a calendar year,⁸⁰ "for the purpose of influencing any election for federal office"⁸¹ must register as a federal political committee with the Commission. A committee airing ads cannot select whether or not it is a federal political committee that must register - its actions determine its status under the law.⁸² The Media Fund's television buy attacking and opposing a clearly identified federal candidate and costing more than \$1,000 requires it to register and abide by the limits and source requirements of the Act.

The Media Fund's ads clearly fall under the Act as a result of the U.S. Supreme Court's December 2003 opinion upholding BCRA. Prior to *McConnell v. FEC*, 540 U.S. ____, 124 S.Ct. 619

⁷⁹ See Thomas Edsall, "Liberal Donors Back Anti-Bush Groups" *Washington Post*, January 31, 2004.

⁸⁰ 2 U.S.C. § 431(4).

⁸¹ 2 U.S.C. § 431(9)(A)(i).

⁸² While BCRA did not change the threshold monetary amounts, it did broaden the standards and the Supreme Court in December of 2003 affirmed this expansion. See 2 U.S.C. § 431(20)(A)(iii), 2 U.S.C. § 434(f)(3) and *McConnell v. FEC*, 540 U.S. ____, 124 S.Ct. 619 at 675 n. 64 (2003).

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(2003), the lower courts had only permitted Federal regulation of communications that involved "express advocacy" as described by the Supreme Court in *Buckley v. Valeo*, 424 U.S. 1 (1976). However, BCRA and the Supreme Court expanded the reach of the Act beyond "express advocacy."

The Commission affirmed in February that the Act required any communication which "promotes, supports, attacks or opposes" a federal candidate to fall under the "hard dollar" rules of the Act. AO 2003-27. The Commission, citing the Supreme Court's decision in *McConnell v. FEC*, 540 U.S. ____, 124 S.Ct. 619 at 675 n. 64 (2003), held that communications referring to a clearly identified federal candidate are for the purpose of influencing a federal election. The Commission confirmed this, stating "communications that promote, support, attack or oppose a clearly identified Federal candidate" have a "dramatic effect" on federal elections. AO 2003-37, at 3.

In AO 2003-37, the Commission told ABC, a Section 527 organization like the Media Fund, that it could not use donations in excess of the Act's limits or from prohibited sources for communications that "promote, support, attack or oppose" a candidate for federal office. AO 2003-37, at 9-10. While the Media Fund allies have argued that AO 2003-37 does not apply to the Media Fund because it did not register as a federal committee, AO 2003-37 reaffirmed the Act's threshold requirement that any group that raises or spends more than \$1,000 is required to register as a federal committee.

According to published reports, the Media Fund plans to raise as much as \$140 million in "soft money" to "fund an independent advertising campaign for the eventual Democratic presidential nominee."⁸³ Further, it is clear that Ickes and the Media Fund intend to flout the Supreme Court's decision in *McConnell v. FEC*, 540 U.S. ____, 124 S.Ct. 619 at 675 n. 64 (2003). The Media Fund has been clear about its purpose: "The fundraising drive, Ickes said, is meant to replace the soft money funding that helped the Democratic party run \$75 million in issue ads in

⁸³ Anne-Marie O'Connor and Ronald Brownstein, "Hollywood Political Event Stirs Up Storm," Los Angeles Times, December 3, 2003.

2000. The Media Fund, he said, can raise unlimited amounts to finance radio and television from late March until the conventions."⁸⁴

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The advertisement being aired by the Media Fund identifies President Bush by name twice at the beginning of the advertisement and again about 20 seconds into the 30 second advertisement. The advertisement's audio states: "George Bush's priorities are eroding the American Dream. It's time to take our country back from corporate greed and make America work for every American." This clearly attacks and opposes President Bush. "It's time to take our country back" can only refer to the November 2004 since only an election affords the opportunity to change governments, so this ad, in any event, constitutes express advocacy in urging the defeat of a candidate so that the Media Fund's backers "can take the country back."

As evidenced by the Media Fund's most recent ad buy (which began airing on March 26, 2004), the Media Fund aired an advertisement advocating the substance of Senator Kerry's economic plan and attacking President Bush on taxes on the day Senator Kerry publicly released his plan. Upon information and belief, the ad arrived at television stations the morning of the day Kerry released his plans, and therefore, had to have been shipped the day before. It is obvious that either the Media Fund knew in advance the substance of Senator Kerry's economic plans or knew that the Kerry campaign would not be advertising and therefore, of the need to fill the advertising void. Either way, this constitutes both a clear violation of the coordination rules under 11 C.F.R. § 109.21 and an illegal use of soft money to support John Kerry's candidacy.

The Media Fund expenditures are also fatally flawed by the illegal coordination between its officers, consultants and employees and the John Kerry for President campaign and the Democratic

⁸⁴ See Anne-Marie O'Connor and Ronald Brownstein.

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National Committee.⁸⁵ This is no independent advertising campaign. Rather it is a coordinated effort.⁸⁶

The Media Fund's Solicitation of Soft Money While Advocating the Defeat of President Bush Violates the Federal Election Campaign Act

In Advisory Opinion 2003-37, the Commission said that a section 527 committee could not solicit non-federal funds in fundraising communications that conveyed ABC's support or opposition to a specific federal candidate. AO 2003-37, p. 19-20. The Commission determined that 2 U.S.C. § 431(8) means that federal political committees can only raise funds using such solicitations if the funds are subject to the prohibitions and limitations of the Act.

The Media Fund's website proclaims its opposition to President Bush's reelection, stating, "In less than four years, George W. Bush and those that support his radical agenda have given us a country less secure, a foreign policy in disarray, record job losses, deficits that mortgage our children's future, environmental policies that abandon common sense and attacks on civil liberties that undermine the very premise of our democracy."⁸⁷ This is clearly an attack on President Bush and a mischaracterization of the President's policies.

The Media Fund's website provides a link labeled "Donate" that links to a page entitled "Victory Campaign 2004.org."⁸⁸ At the top of its on-line donation page, "Victory Campaign 2004" says, "I want to help change the course of the country away from the Bush administration's radical agenda...."⁸⁹ This solicitation and disclaimer indicates that contributions over \$5,000 are accepted and will be placed in a non-federal account. This violates the principle laid out by the Commission in AO 2003-37. The Commission indicated that only donations subject to the prohibitions and

⁸⁵ Jim Jordan, who left his position as John Kerry's campaign manager in November of 2003, serves as spokesperson for Media Fund and America Coming Together (another 527 organization), raising concerns about coordination through former campaign staff under 11 CFR § 109.21(d)(5).

⁸⁶ See pp. 51-61.

⁸⁷ See <http://www.makeamericaworkforus.org/> (visited March 9, 2004)

⁸⁸ <https://66.216.126.213/contribute/> (visited March 9, 2004).

⁸⁹ *Id.*

limitations of the Act may be raised when indicating opposition to a clearly identified federal candidate. AO 2003-37, p. 19-20.

Given the interpretation of 2 U.S.C. § 431(8) provided to ABC, it is clear that the Media Fund is violating the Act by soliciting soft-money through a fundraising solicitation that expressly advocates the defeat of President Bush.

The Media Fund's Solicitations to Its Donors Are in Violation of Federal Law

The Commission has determined that federally registered political committees, as the Media Fund is required to be, cannot solicit soft money "by using the names of specific Federal candidates in a manner that will convey [its] plan to use those funds to support or oppose specific federal candidates...." AO 2003-37, pp. 19-20. Such solicitations, the Commission determined, violate federal law. 2 U.S.C. § 431(8).

Although the Media Fund has struggled to keep its fundraising efforts from public view, published reports described a December event in Hollywood with representatives of liberal special interests where the Media Fund sought donors and plotted strategy to raise soft money to defeat President Bush.⁹⁰ Under the auspices of an umbrella group called the "Joint Victory Campaign" comprised of the Media Fund and another soft dollar Section 527 organization, America Coming Together, donors were asked to contribute soft money for the purpose of defeating President Bush.

The "Joint Victory Campaign" donated \$3 million in soft money to the Media Fund and reported this donation to the IRS. In fact, this is the only donation the Media Fund had received as of December 31, 2003 according to its IRS report. IRS records indicate liberal special interests - both corporate and individuals - donated large sums of soft money to the Joint Victory Campaign which then funneled this soft money to the Media Fund. Donors to the Joint Victory Campaign

⁹⁰ *Id.*

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include Laurie David of Los Angeles (\$95,000)⁹¹, Sustainable World Corporation of Houston (\$3,100,000),⁹² Linda Pritzker of Houston (\$900,000),⁹³ Steve Bing of Los Angeles (\$1,998,397)⁹⁴ and Agnes Varis of New York City (\$345,000).⁹⁵

America Coming Together Is Violating The Act By Using Soft Money To Register Voters For The Express Purpose Of Influencing The Presidential Election.

ACT is filed as a federal political committee with the FEC. Yet it is conducting massive voter mobilization efforts in 17 Presidential target states using 98 percent soft dollars for the express purpose of defeating a federal candidate in flagrant disregard of Advisory Opinion 2003-37. Since ACT fits squarely within this ruling, its knowing and willful disregard of the law requires immediate action.

ACT's own website makes clear that the purpose behind its current voter registration and identification work and its turnout work next fall is a "substantial effort in 17 key states to defeat President George W. Bush."⁹⁶ Not coincidentally, these are the same states targeted by the Kerry campaign and the same states in which the Media Fund and MoveOn.org assisted the Kerry campaign's first television buy. As ACT's organizer in the Presidential battleground state of Ohio told Fortune Magazine: "ACT already has get-out-the-vote specialists canvassing homes in Ohio to identify the most virulent opponents of the President. ... The object...is to register 200,000 new voters in all 88 counties and target each of them with the kind of information that will propel them to the polls on Election Day."⁹⁷

To be able to carry out its activities with the resources it has available to it, ACT contradicted its own stated purpose by submitting a stunningly untruthful federal/non-federal

⁹¹ 10960 Wilshire Boulevard, # 2150, Los Angeles, CA 90024

⁹² PO Box 27529, Houston, TX 77227

⁹³ 3555 Timmons Lane #800, Houston, TX 77027

⁹⁴ 1801 Avenue of the Stars #150, Los Angeles, CA 90067

⁹⁵ 150 Central Park South, New York, NY 10019

⁹⁶ America Coming Together, www.americacomingtogether.com (Accessed Feb. 18, 2004).

⁹⁷ Jeffrey H. Birnbaum, "The New Soft Money," *Fortune*, Nov. 10, 2003.

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allocation ratio of 2 percent federal and 98 percent non-federal, a clear violation of 11 C.F.R. § 106.6, given their self-described purpose of influencing a federal election by attacking and opposing President Bush.⁹⁸

In AO 2003-37, the Commission told Americans for a Better Country, which also both registered with the FEC and had soft dollar components, that it could not raise non-federal funds in solicitations that conveyed its support or opposition to a specific federal candidate. *Id.* at 19-20, citing 2 U.S.C. § 431(8). ACT fits squarely under AO 2003-37, yet continues to disregard with apparent impunity the clear dictates of the Commission about the way it must pay for its mobilization and fundraising practices.

ACT's purely federal purpose is evident both in its soft dollar fundraising (in conjunction with Ickes' Media Fund through Joint Victory Committee 2004) and through its website and mail solicitations. On December 3, 2004, ACT joined the Media Fund to hold a large Hollywood fundraiser to collect millions in illegal soft dollars from Hollywood activists to defeat President Bush.⁹⁹ Reports indicate that similar fundraising events have been held "to solicit donors in other cities, including Seattle and New York...."¹⁰⁰

ACT's website proclaims its opposition to President Bush's reelection. On its opening page, it says, "America Coming Together (ACT) will conduct a massive voter contact program, mobilizing voters to defeat George W. Bush and elect progressive candidates all across America."¹⁰¹ At the top of its on-line donation page which solicits both hard and soft dollars, ACT says, "I am strongly committed to kicking George W. Bush out of the White House and electing progressive candidates

⁹⁸ See footnote 30; See also Greg Sangillo, "A More Democratic Union," *National Journal*, March 20, 2004, at p.900 ("Campaign finance watchdogs complain that because ACT is so open about its aim of defeating President Bush, all of its contributions should be counted as 'hard money', and therefore subject to the standard campaign contribution limits.")

⁹⁹ Anne-Marie O'Connor and Ronald Brownstein, "Hollywood Political Event Stirs Up Storm," *Los Angeles Times*, December 3, 2003.

¹⁰⁰ *Id.*

¹⁰¹ See <http://www.americacomingtogether.com> (visited February 24, 2004)

across America! Please use my contribution to invest in political work to restore democracy in 2004!"¹⁰²

Furthermore, a recent written solicitation confirms that ACT describes its purpose as raising funds outside of the prohibitions and limitations of the Act while advocating the defeat of George W. Bush. The attached solicitation makes statements such as "if we can count on your personal support...2004 will be a year ofGeorge W. Bush going home" and "we will have defeated George W. Bush." Their "organizational plan" attached to their solicitation indicates that "we know how many votes we need to defeat President Bush...and we're organizing a massive, interconnected program of voter contact to go out and find those votes." Their response device also states, "I want to...defeat George W. Bush." This violates the principle laid out by the Commission in AO 2003-37. The Commission indicated that only donations subject to the prohibitions and limitations of the Act may be raised when indicating opposition to a clearly identified federal candidate. AO 2003-37, p. 19-20.

Given the interpretation of 2 U.S.C. § 431(8) provided to ABC, it is clear that ACT is violating the Act by raising soft-money in a solicitation that expressly advocates the defeat of President Bush.

Further, ACT's own documents indicate that the organization plans to violate the principles and willfully ignore the interpretation of the federal election laws provided by the Commission with respect to voter registration and turnout operations. ACT's "Action Plan" says, "Each state director will build a detailed plan and strategy to match the specific circumstances of his or her state....We know how many votes we need to defeat President Bush and elect progressive candidates and we're organizing a massive, interconnected program of voter contact to go out and find those

¹⁰² See <http://www.americacomingtogether.com/donate> (visited February 24, 2004)

votes....And, that's just what our America Coming Together strategy is all about. And a one-way ticket back to Crawford, Texas."¹⁰³

The Commission recently held that voter contact and get-out-the-vote activity which includes express advocacy of the defeat of a federal candidate could not be paid for without using a significant portion from federal funds (in other words, not the 2 percent ACT is claiming).¹⁰⁴ In addition, media reports confirm that ACT's purpose in conducting its activities is to defeat President Bush.¹⁰⁵

As a matter of law, ACT submitted a knowingly false estimate of its federal / non-federal allocation ratio. Commission regulations require that political committees engaged in federal and non-federal activities must allocate their federal and non-federal payments based on a ratio of federal to non-federal election disbursements. 11 CFR § 106.6. The year-end report filed by ACT reports its expected federal allocation at 2%. This is knowingly false in light of ACT's own public statements describing its purpose. The attached solicitation letter and description of their activities is almost entirely focused on federal elections, clearly identifies several candidates for federal office and lays out a specific plan to defeat George W. Bush.¹⁰⁶ There is no mention at all of any specific

¹⁰³ See Attachment B, pp. 3-4 (emphasis in the original).

¹⁰⁴ The Commission stated in AO 2003-37:

8. May ABC use non-Federal funds to pay for voter registration and get-out-the-vote public communications that clearly identify a Federal candidate and that expressly advocate his election or defeat or otherwise promote, support, attack, or oppose the candidate? ...

No. Some of the messages contain specific phrases such as "vote for George W. Bush for President," or "It's your duty to register to vote so that you can support George Bush's reelection as President of the United States." These communications constitute express advocacy under 11 CFR § 100.22(a). Other messages refer directly to an explicit act of support for a clearly identified candidate, such as "If you care about keeping the strong defense President Bush has put in place, go out and vote November 2." These messages promote, support, attack, or oppose a clearly identified Federal candidate. Other messages promote, support, attack, or oppose a clearly identified Federal candidate in a different way. These include messages such as "President Bush has led the fight in Congress for a stronger defense and economy. Call him and tell him to keep fighting for you."

¹⁰⁵ John DiStaso, "NH seen as swing state," The Union Leader, February 24, 2004. ("A newly formed nationwide independent political organization [ACT] has set shop in Manchester's Millyard to promote 'progressive' candidates and convince voters to reject Bush in November.")

¹⁰⁶ See Attachment B.

non-federal candidate. Based on ACT's actual activities, this ratio should be reversed and 98 percent of ACT's spending should be considered to be for federal election activities.

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Legal Analysis: Coordination

John Kerry For President Accepted An Illegal Soft Money Contribution From The The Media Fund And Moveon.Org By Illegally Coordinating Their March 10-19 Television Buys In Violation Of 11 C.F.R. § 109.21.

A cursory review of the \$5.1 million combined television buy of John Kerry for President, the Media Fund and MoveOn.org in early and mid-March demonstrates that Kerry accepted, and the Media Fund and MoveOn.org made, a prohibited soft money contribution by illegally coordinating their joint media buy.¹⁰⁷

These buys ran in the battleground states from March 10 to March 19 and coincided with all-hard dollar Bush-Cheney '04 buys. the Media Fund and MoveOn.org used illegal soft dollars to purchase their shares of the buy that benefited the Kerry campaign, through ads that "attacked" and "opposed" President Bush. As such they constituted prohibited contributions to the Kerry campaign. Even if the Media Fund and Moveon.org had used all hard dollars to purchase time, these buys would still have been excessive contributions under 11 C.F.R. § 109.21 since they were illegally coordinated.

The cash strapped Kerry campaign, faced with a broader Bush-Cheney '04 buy paid for entirely with funds raised under the limits and prohibitions of the Act, turned to the Democratic soft money groups. Bush-Cheney '04 began advertising on television in 80 markets on March 4. Between March 10 and March 13, John Kerry for President, the Media Fund, and MoveOn.org placed advertising in 53 of these 80 markets.

An analysis of the television buy data of John Kerry for President, the Media Fund, and MoveOn.org indicates the level of coordination among and between the soft money shadow groups and the Kerry campaign in their effort to defeat President Bush. As the chart below demonstrates,

¹⁰⁷ See Attachment J.

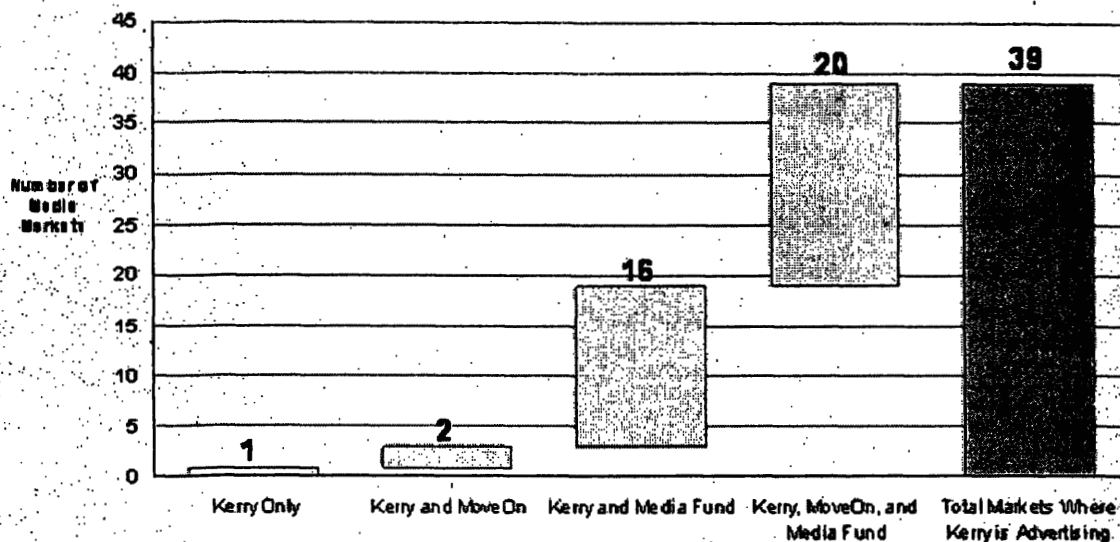
there is near perfect uniformity in markets that the three groups decided to buy - and not buy. In other words, wherever one went the others were sure to go in an effort to use soft dollars to counter a hard dollar Bush-Cheney '04 buy.

There was an overlap in 38 of 39 markets (97.5%) in which the groups bought time. Under this coordinated system, the shadow groups and Kerry campaign decided to advertise in the markets they determined were key to the Kerry vote. The groups determined not to try to match the Bush-Cheney '04 buy in every market, but only in some. Under their system, the Media Fund and MoveOn.org bought time, and two to three days later the Kerry campaign came in and bought the remaining time the three entities pre-determined were needed.

A breakdown of the three parties' overlapping buys shows that the Media Fund and/or MoveOn.org advertised in only 14 markets where Kerry did not buy. Furthermore:

- The Media Fund and MoveOn.org advertised in only 9 non-Kerry markets as part of their most recent buys
- The Media Fund alone advertised in only 5 non-Kerry markets as part of its most recent buys
- MoveOn.org alone advertised in only 1 non-Kerry market as part of its most recent buy.

The chart below summarizes this coordinated buy:



As Attachment J shows, the two soft money committees and John Kerry for President also divided up the day parts in a coordinated effort to have an anti-Bush/pro-Kerry message from one of the groups on the air to counter Bush-Cheney '04 in their selected markets.¹⁰⁸ This strategy of dividing up the buys in markets key to them allowed Kerry and the soft money groups to stretch their individual buys in an attempt to counter the Bush-Cheney '04 buy.

To counter the Bush-Cheney '04 hard dollar buy, John Kerry for President spent only \$1,994,290 in hard dollars; the Media Fund spent \$2,012,735 in illegal soft dollars, and MoveOn.org spent \$1,185,132 in illegal soft dollars to air messages which either attacked or opposed President Bush or promoted or supported John Kerry. As a communication which mentioned only federal candidates from groups whose stated purpose is to defeat the President, the Media Fund and MoveOn.org ads should have been paid for with all hard dollars and not coordinated. Since both The Media Fund and MoveOn.org are political committees and their ads promote, support, attack or oppose a clearly identified federal candidate for, by their own admission, the purpose of

¹⁰⁸ Source: New York Times, March 27, 2004.

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influencing a federal election they were required, but failed, to use hard dollars. See AO 2003-37 at

9. The scripts of the ads are included as Attachment K.

Under BCRA's coordination rules, it does not matter if the coordinated buy was the product of an overall agreed upon system for buying time, or the transference of plans and needs about this specific buy. The self-evident truth is that coordination occurred to enable the Kerry campaign to stretch its scarce hard dollars by having to buy only a portion of the market, while the soft dollar Media Fund and MoveOn.org (by their own admission working with each other to avoid duplication) paid for the rest of the anti-Bush/pro-Kerry messaging in other coordinated markets. This pattern of dividing up the time was replicated in state after state for this buy.

The totality of the buy orchestrated by John Kerry for President, the Media Fund and MoveOn.org constitutes a per se violation of 11 C.F.R. § 109.21. As Kerry's campaign manager until November 2003, Jordan knew that the Kerry campaign would need financial assistance after the primaries and knew exactly the markets where that help would be needed. Harold Ickes, the head of the Media Fund and a member of the Democrat National Committee Executive Committee, knows or should know this same information based on his active participation in the activities of the DNC, which is researching and preparing its own campaign efforts on behalf of and in coordination with the Kerry campaign. Ickes and Jordan have made no secret of the fact they believe they can coordinate their activities with other members of the shadow web such as MoveOn.org, the organization that paid for a portion of the coordinated ad buy.

As a result of the clear evidence presented by this buy as well as the overlap in personnel between the web of Democrat soft money organizations with the John Kerry for President campaign and the Democratic party presented herein, this coordinated illegal activity must be stopped before the letter and spirit of the Act are destroyed.

The Various Roles of the Individuals Involved Demonstrates a Willful Disregard for the Law and Constitutes Per Se Coordination.

In addition to using illegal soft money to influence a federal election and refusing to register as a political committees with the FEC, the interlocking relationships among the John Kerry for President Committee, the illegal 527 soft money organizations and the Democratic party provide blatant examples of impermissible coordination that renders most of the 527 groups' activities illegal contributions to the Kerry campaign. While former Kerry campaign manager Jim Jordan provides the most visible example, there are numerous other relationships that violate BCRA's coordination regulations, as demonstrated below. See 11 C.F.R. § 109.21.¹⁰⁹

Under the coordination test implemented as a result of BCRA, if the payment and content standards are met, the existence of former employees is among the tests that satisfy the "conduct" prong. To satisfy the "former employee" standard of 11 C.F.R. § 109.21(d)(5): (1) the communication by the 527 organization must be paid for by the employer of the person who used to work for the candidate (here Kerry's campaign) or a political party or an agent of either during "the current election cycle," and (2) that former employee "uses or conveys" to the entity paying for the communication information about the identified candidate's (here Kerry's) "plans, projects, activities, or needs, ... or a political party committee's campaign plans, projects, activities, or needs" or "information used by the former employee in providing services to the candidate (or campaign) who is clearly identified in the communication ... is material to the creation, production, or distribution of the communication."

Under this tough standard, if Jordan, Ickes or any of the others named above used any information they learned while working for Kerry or the Democratic party in any way for the soft money groups the conduct standard is met. It is virtually impossible for someone in Jordan's or

¹⁰⁹ See pp. 51-61.

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Ickes' position to not meet this standard given that the information that they learned while working for the candidate or Party is intertwined with what they are doing for the soft money groups. For example, the Kerry campaign, while Jordan was manager knew it would be out of money after the primaries and would need help with an anti-Bush message in key battleground states, and Ickes from his role at the Democratic National Committee knew it would not have sufficient funds for issue ads or voter mobilization so an outside group would need to attack the President and register voters in key states. This is precisely what the Media Fund, ACT, America Votes and the other soft money 527s are doing in their individual communications and activities. What is clear is that the shadow Democratic network of soft money 527s are doing precisely what the Kerry campaign needs them to do on a daily basis.

Jim Jordan's Employment for The Media Fund and ACT Make Their Expenditures Illegally Coordinated with John Kerry for President

The case of Jim Jordan demonstrates how the illegal coordination works:

As manager of the John Kerry for President campaign until late November 2003, and now a principle official of the 527 soft money organizations ACT and the Media Fund, Jordan is the prototype of the "agent" and "former employee" upon which the FEC regulations prohibiting coordination are patterned. As such, Jordan, John Kerry for President, ACT and the Media Fund are guilty of violating the Act and 11 C.F.R. § 109.21.

ACT: By its own admission, ACT's purpose is voter mobilization efforts to defeat President Bush. It has hired field representatives to organize GOTV activities in only the Presidential "battleground" states for the upcoming election.¹¹⁰ And, its own solicitation letters describe its purpose as defeating President Bush.¹¹¹

¹¹⁰ Attachment B, ACT's "Action Plan" mailed to solicit soft contributions to influence federal elections.

¹¹¹ Tim Curran, "Senate Brims With Would-Be Presidents," Roll Call, January 15, 2001.

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Under the new BCRA provisions, an expenditure becomes "coordinated" if a 3-part test of 11 C.F.R. § 109.21 is met.¹¹² As Kerry's campaign manager until only four months before the Media Fund aired ads that benefited Kerry and ACT registered voters in the name of defeating President Bush, Jordan's activities and employment are a per se violation. As campaign manager, his knowledge of the Kerry campaign's plans, needs and strategies cannot be divorced from the decisions he now makes daily based on information brought to the Media Fund and ACT in their \$350 million effort to defeat President Bush.

As a matter of law, Jordan's involvement with the Media Fund and ACT meet the requirements for illegal coordinated soft money communications with John Kerry for President. All three prongs of 11 C.F.R. § 109.21 are met:

Payment

The Media Fund and ACT are third party groups paying for ads that criticize President Bush, Senator Kerry's opponent in the November election, thus satisfying the payment prong of 11 C.F.R. § 109.21(a)(1).

Content Standard

The activities of ACT and the Media Fund satisfy the content standard. 11 CFR § 109.21(a)(2). ACT's attached solicitation is both express advocacy of the defeat of President Bush, 11 C.F.R. § 109.21(c)(3), and a public communication meeting the requirements of 11 C.F.R. § 109.21(c)(4).

The Media Fund has aired ads that attack President Bush, thereby satisfying 11 CFR § 109.21(c)'s content requirement. Indeed, its first ad urged viewers to "take back the country," a

¹¹² See pp. 12-13.

statement of express advocacy that can only be interpreted as occurring through defeat in an election. The ads are also "public communications" satisfying 11 C.F.R. § 109.21(c)(4).¹¹³

Conduct Standard

Jordan's employment as Kerry's campaign manager until November 2003 amounts to a clear violation of the conduct standard. By definition, he certainly knew, and likely formulated, the Kerry campaign's "plans, needs and strategies" for this period after the nomination. Even if Kerry's ultimate victory in the primary period was not clear, the campaign certainly gave consideration to the time period between securing the nomination and the nominating convention because the Kerry campaign eventually rejected taking matching funds. It is evident that sufficient contacts exist to demonstrate coordination between the Kerry campaign and the soft money organizations.

As a matter of law, his current employment with the Media Fund, ACT and America Votes and his recent role as a former employee of John Kerry's Presidential campaign, meets the requirements for coordination through a "former employee" established by the Commission in 11 CFR § 109.21(d)(5). The Commission concluded that: "This coordination standard also applies to the employer of an individual who was an employee or independent contractor of a candidate, authorized committee, or political party committee. The Commission interprets the Congressional intent behind § 214(c)(3) of BCRA to encompass situations in which former employees, who by virtue of their former employment have been in a position to acquire information about the plans, projects, activities, or needs of the candidate's campaign or the political party committee, may subsequently use that information or convey it to a person paying for a communication."¹¹⁴ Under

¹¹³ The states of Arizona (May 8 presidential selection), Arkansas (May 18), Delaware (May 14), Maine (May 15), Michigan (May 21), Nevada (April 29), New Mexico (June 1), Oregon (May 18), Pennsylvania (May 27) and West Virginia (May 11) all have primary elections within 120 days of the ads' broadcast in those states.

¹¹⁴ See Explanation and Justification, "Coordinated and Independent Expenditures," 68 F.R. 438 (January 3, 2003) (emphasis added).

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this legal standard, both Jordan and his employers have violated BCRA's coordination rules, and John Kerry for President has received illegal contributions.

Other Examples of Illegal Coordination Through "Former Employees"

In addition to Jordan, there are numerous additional examples of persons privy to John Kerry for President's "plans, projects, activities, or needs" or the Democratic party's "plans, projects, activities, or needs" or ACT's, the Media Fund's or others of the Democrats illegal 527 committees "plans, projects, activities, or needs" who, during the course of this election cycle, are now working in such a manner that they render all of the 527 organizations' activities illegal by reason of improper coordination under 11 C.F.R. § 109.21.

In light of the well orchestrated section 527 scheme that clearly benefits the plans and mirrors the needs of the Kerry campaign and Democratic party at the conclusion of their primary process, there intertwining relationships and contacts indicate that proper separation has not been kept under the new BCRA standards. As detailed above, the following individuals and groups have overlapping roles leading to violations of the coordination rules:

- **Harold Ickes** is the President of the Media Fund and a member of the Democratic National Committee's Executive Committee. It defies credibility that the plans he is now executing with soft dollars from the Media Fund were not discussed as a "need" or a "project" by the DNC's executive committee during this election cycle, or that he is not "using" information he learned from his DNC position as part of his soft money Section 527 political committee activities.
- **Minyon Moore**, during this election cycle, is both a Kerry campaign consultant and a member of ACT's executive committee. It is implausible that she could avoid "using" or "conveying" information she learned in one role from influencing her thinking and decisions in her other role.

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- **Michael Meehan** is a paid Kerry staff member and remains on leave from his position at NARAL Pro-Choice America, where he helped develop that organization's soft money plans for this cycle. NARAL is one of the founders (along with Rosenthal, Ickes and Malcolm) of the shadow soft money 527 group, America Votes. If Meehan takes with him any of the information he learned about those soft dollar plans (and how could he not), it is a violation of 11 C.F.R. § 109.21 if he "convey" or "uses" that information for the Kerry campaign (and how could he not under the standard established in 11 C.F.R. § 109.21).
 - **Andy Grossman and Cathy Duvall** worked for the Democratic party's senatorial and congressional committees (respectively) in this election cycle before joining the staffs of the shadow 527 soft money groups. Any transference of information from their previous employers that results in activity that helps Senate or House candidates would constitute illegal coordination.
 - **Bill Richardson** is both the chair of the Democratic National Convention this summer in Boston, and is involved in at least two 527 organization that are running soft dollar issue ads, Voices for Working Families (serving as Vice President) and Moving America Forward (an organization he founded). Some party officials can wear "two hats" without running afoul of the coordination regulations, but that exception refers to fundraising and political endorsements, not the express political communication activities in which Richardson is engaged. As head of the national convention he will, by definition, learn and act on the plans and needs of the Kerry campaign (what else, after all, is a Convention about other than showcasing for the fall campaign the plans, needs, activities and projects of the Party's nominee). As someone who is running two soft dollar 527 committees aimed at defeating the President and helping the Democratic party's nominee, Richardson by definition is using

what he learns in his Convention job to shape the messaging of the soft dollar issue ads. Voices for Working Families and Moving America Forward are running.

- **Linda Chavez-Thompson** is the Vice Chair of the Democratic National Committee while at the same time serving as the treasurer of Voices for Working Families, one of the shadow soft money 527 committees. She would be permitted to raise funds for both organizations under the "two hat" theory, but she could not be involved in the "plans, needs, projects or activities" in a way that transmitted any information from one to the other. Any "use" or "conveyance" of information between the Democratic National Committee and one of the soft money 527 committees and their agents would violate BCRA's coordination rules.
- **Harold Schaitberger** is National Co-Chairman of John Kerry for President, Inc and is a board member of Voices for Working Families and General President of the International Association of Firefighters. These relationships evidence coordination between the Kerry campaign and Voices for Working Families, a soft money 527 committee and therefore violate BCRA's coordination rules.
- **MoveOn.org** is simultaneously airing soft dollar issue ads that promote, attack, support or oppose a federal candidate, and sending out fundraising mail for the John Kerry for President campaign. Any contacts between the two while engaging in the different roles that transfers any political plans, needs, projects or activities of the other is a violation of FEC regulations. MoveOn.org's compliance is problematic since Eli Pariser, as noted above, is charge of both the hard dollar and soft money activities of MoveOn.org. In addition, MoveOn.org is claiming its broadcast ads are "independent" of the Kerry campaign, while at the same time hosting joint Kerry/MoveOn.org "House Parties."¹¹⁵

¹¹⁵ See p. 25 and Attachment G.

Legal Analysis: Other Soft Money Violations

League of Conservation Voter's Express Advocacy of John Kerry's Candidacy With Illegal Soft Money Constitutes A Prohibited Corporate Expenditure

As the Supreme Court detailed in *McConnell v. FEC*, 540 U.S. ___, 124 S.Ct. 619 (2003), there are long-standing prohibitions on corporate expenditures and they have been upheld repeatedly. The League of Conservation Voters ("LCV") is a corporation not registered as a political committee with the FEC and, as a result, LCV is prohibited from making expenditures within the meaning of the Act. While it may try to claim an exclusion under "MCFL," contributions from an incorporated entity such as a foundation would permanently taint LCV's eligibility for a "MCFL" exemption.

LCV's enclosed advertisement is express advocacy under the Act, both before and after passage of BCRA. The ad refers to two clearly identified candidates for federal office, George Bush and John Kerry. The ad, when viewed "by a person of ordinary intelligence" *McConnell* at 675, n. 64, is clearly express advocacy of John Kerry's candidacy. The ad opens with the following audio: "In the race for President, there's only one candidate who can take on President Bush...."¹¹⁶ Further into the ad, the announcer says, "To beat him...the Democrat with the best record...John Kerry."¹¹⁷ Under both the original and new tests for express advocacy set forth by the Supreme Court, this advertisement constitutes express advocacy paid for in part with corporate funds from the numerous foundations.

¹¹⁶ See enclosed CD-ROM of advertisement from the start until 5 seconds into the ad.

¹¹⁷ See enclosed CD-ROM of advertisement from 0:20 through 0:26.

The Sierra Club Memo Says Its Major Goal is Defeating George Bush and, Therefore, Is Illegally Using Soft Money to Influence A Federal Election and is Illegally Coordinating Its Activities with the Kerry Campaign.

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A recent internal Sierra Club memorandum to "Volunteer Leaders and Staff" was entitled "New leadership of our Stop Bush / Beat Bush Campaign."¹¹⁸ Given its own admission that its major purpose is influencing a federal election, the Sierra Club must register its soft money component with the Commission and comply with the prohibitions and limitations of the Act. This admission that its major purpose is influencing a federal election calls into question the Sierra Club's tax exempt status because a 501(c)(4) may use no more than half of its budget for political purposes.¹¹⁹

The attached memorandum describes in detail how the Sierra Club intends to restructure its entire organization for the express purpose of "defeat[ing] George Bush in 2004." The memo dictates that, "all branches of the Sierra Club" should "align their activities and resources with these objectives."¹²⁰ The memorandum continues:

All of the various major programs of the Club...will feed into this overall effort....Debbie [the National Campaign Director] and Bill [Deputy National Campaign Director], along with the PEAC committee, will be charged with ensuring that the entire national organization carries out the Board mandate that stopping, as well as replacing, Bush, are the Sierra Club's highest priorities for the next fourteen months....It is important that we all respect the need for flexibility and keep our eye on the bullseye - stopping Bush.¹²¹

This memorandum makes clear the Sierra Club's overriding purpose for 2004 is the defeat of a clearly identified federal candidate, President Bush.

One of the two authors of this memorandum is Carl Pope, executive director of the Sierra Club, who is actively involved in America Coming Together and America Votes, two of the 527 soft

¹¹⁸ See Attachment O.

¹¹⁹ The Sierra Club does maintain a separate segregated fund, but the PAC is not mentioned in the memorandum nor does the memorandum make any distinction between the various component parts of the Sierra Club.

¹²⁰ Attachment O, page 1.

¹²¹ Attachment O, page 2.

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money organizations detailed above whose sole purpose is to defeat George W. Bush. The year end reports for the Sierra Club's soft money 527 reveals donations to it in amounts that are greater than the limitations contained in the Act.¹²² An organization whose "highest organizational priority" is "to defeat George Bush"¹²³ and raises more than \$1,000 for such a purpose is required to register with the Commission as a federal political committee and comply with the limitations and prohibitions of the Act. In the second half of 2003, the Sierra Club's soft money 527 received nearly \$1.5 million from the Sierra Club's incorporated 501(c)(4) and multiple donations from individuals that exceed the \$5,000 limitation in the Act.¹²⁴ The soft money 527 also donated \$50,000 to America Votes, the organization Carl Pope helps lead that is expressly dedicated to defeating President Bush.¹²⁵

Pope's position in the soft money scheme supporting John Kerry makes the activities of the Sierra Club, particularly in light of the attached memorandum, illegal under the Act. Pope, through his connection to Jim Jordan and ACT has, upon information and belief, learned about the plans and strategies of the Kerry campaign. Pope then, upon information and belief, uses this information when organizing and directing the soft money activities of the Sierra Club. Pope's actions result in an illegal coordinated expenditure of soft money on behalf of the Kerry campaign.¹²⁶

¹²² IRS Report included in Attachment O.

¹²³ Attachment O

¹²⁴ Attachment O.

¹²⁵ *Id.*

¹²⁶ Carl Pope has stated that the "Sierra Club would even consider ignoring any new FEC restrictions." Sharon Theimer, "FEC Weighs New 'Soft Money' Restrictions," *Associated Press*, March 4, 2004.

Relief Sought

The activities of the various groups and individuals described in this complaint demonstrate a massive conspiracy to corrupt the federal campaign finance system, a finance system mandated by the 2002 Bipartisan Campaign Reform Act amendments and constitutionally sanctioned by the Supreme Court in *McConnell v. FEC*. These groups and individuals have conspired to circumvent the law by creating a network of newly formed 527 political organizations working in complicity with other long established special interest groups and wealthy individuals to illegally raise and spend soft money, and coordinating their efforts, all with the express purpose of defeating President Bush. This massive ongoing effort has resulted in numerous violations of the Act including 2 USC §§ 432, 433, and 434, by failing to establish, register and report as federal political committees by some, and 2 USC §§ 441a and 441b by making or receiving excessive and/or prohibited contributions by all.

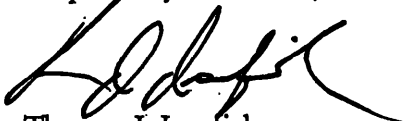
These illegal activities are ongoing. It is clear from their own statements that these special interest groups and individuals will not stop their illegal efforts, regardless of what deliberative action the FEC might take. Even if the Commission were to expedite its proceedings, the administrative process required under the Act insures that no final action by the FEC would be timely and before the conclusion of this presidential election cycle under these circumstances. (see 2 USC § 437g (a)). No penalty, civil or criminal, after the fact could possibly remedy the irreparable harm caused by allowing this illegal activity to continue unabated. These individuals and groups understand and appreciate that fact. Allowing this activity to continue would effectively destroy and make meaningless the campaign finance system mandated by Congress in 2002 and would further add to the cynicism of the American electorate regarding the FEC's regulation of illegal money in politics.

Because these special interest groups and individuals remain defiant and because the Commission's own legally mandated process will not result in a timely resolution of this complaint,

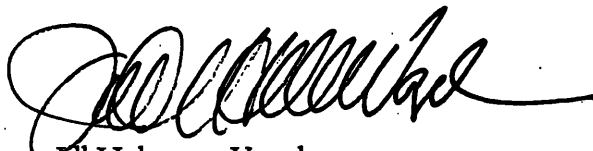
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we respectfully request and urge the Federal Election Commission to dismiss this complaint at its next Executive Session meeting, in order to allow the complainants to immediately seek relief in the Federal District Court for the District of Columbia. Such responsible final action by the Commission would legally allow Complainants to seek an immediate judicial remedy. 2 UCS § 437g(a)(8). This action by the Commission would be unprecedented, but the matter before the FEC is unprecedented. In this unique circumstance the Complainants respectfully submit that the Commission should take this unprecedented action which is, in our view, the only available responsible action, and dismiss this complaint allowing for immediate judicial review. We respectfully submit that the Commission's mandate to enforce the Federal Election Campaign Act demands such extraordinary action.

Respectfully Submitted,



Thomas J. Josefiak
General Counsel
Bush-Cheney '04, Inc.




Jill Holtzman Vogel
Chief Counsel
Republican National Committee

Verification

Jill Holtzman Vogel, hereby verifies that the statements made in the above complaint are, upon information and belief, true.


Sworn to pursuant to 18 U.S.C. § 1001.


Jill Holtzman Vogel

District of Columbia

The foregoing instrument was subscribed and sworn before me this 31 day of March, 2004 by

Jill Holtzman Vogel

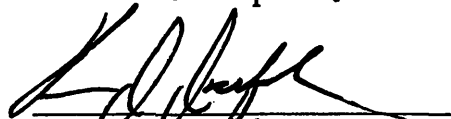

Notary Public

My commission expires July 31, 2007

HANNAH B. THRUSH
NOTARY PUBLIC DISTRICT OF COLUMBIA
MY COMMISSION EXPIRES JULY 31, 2007

Thomas J. Josefiak, hereby verifies that the statements made in the above complaint are, upon information and belief, true.


Sworn to pursuant to 18 U.S.C. § 1001.


Thomas J. Josefiak

County of Arlington
Commonwealth of Virginia

The foregoing instrument was subscribed and sworn before me this 31 day of March, 2004 by

Thomas J. Josefiak


Notary Public

My commission expires July 31, 2007

HANNAH B. THRUSH
NOTARY PUBLIC DISTRICT OF COLUMBIA
MY COMMISSION EXPIRES JULY 31, 2007